

FEDERAL ACQUISITION PROCESS

INSTRUCTOR GUIDE



**FEDERAL ACQUISITION INSTITUTE
OFFICE OF ACQUISITION POLICY
MAY 1991 (FAC 90-4)**

FORWARD TO THE SECOND EDITION

This is the second edition of the Federal Acquisition Process. The Instructors Guide, Text/Reference, and Viewgraphs have all been made current through FAC 90-4. In addition, we have made extensive changes in the materials.

The following are tables of pages that have been changed in the Text/Reference.

TEXT/REFERENCE	
PAGE	NATURE OF CHANGE
3-5 through 3-6	Additional Executive Orders added.
4-15 through 4-16	Section 4.3 deleted ("The Acquisition Function in Operation").
6-11	"Independent Government Cost Estimate" added to the list of typical elements.
6-27	Per FAC 90-4, Federal Prison Industries, Inc., is no longer a required source for <u>services</u> .
6-31	Correction to the description of the "Small Business—Small Purchase" set-aside.
6-35	Per FAC 90-3, modified role of senior procurement executive re: J&As.
7-32 and 7-33	Title changed from "Price Related Certificates" to "Cost and Pricing Data", with greater emphasis on requesting such data. Includes the new dollar threshold for certification in DoD and other title 10 agencies. Deletes coverage of Commercial Pricing Certificate (given the repeal of section 2323 of title 10, USC).
7-38 and 7-39	Added emphasis on purpose of discussions in competitive negotiations.
8-31	Per FAC 90-3, added language on interest for overpayments. Also deleted language on certificates of commercial pricing.

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INTRODUCTION

INTRODUCTION

APPROACH TO THE COURSE

Length:	Two days.
Who Should Attend:	Mid-level and senior acquisition personnel in fields other than Contracting (GS-1102).
Objectives:	This course is designed to provide knowledge about the Federal acquisition process and the principal duties and business decisions of Contracting Officers and their representatives. The following are the specific objectives of each lesson:

Preface

At the end of this lesson the trainee should be able to:

- Identify the basic components of the Federal acquisition process.
- Define significant terms used in Federal contracting.
- List and describe the essential elements of a contract.
- Describe how a contract is discharged.

Lesson 1 — Goals of the Federal Acquisition Process

At the end of this lesson the trainee should be able to identify and define the goals of the Federal acquisition process

Lesson 2 — Organizational Roles and Responsibilities

At the end of this lesson the trainee should be able to:

- State the role of the legislative branch relative to the acquisition process.
- State the role of the executive branch relative to the acquisition process.
- State the role of the judicial branch relative to the acquisition process.
- State the role of the public and non-Government organizations in the acquisition process.

Lesson 3 — Basic Statutes and Regulations

At the end of this lesson the trainee should be able to:

- Identify and describe the four principal sources of Federal Contract Law.
- Identify the basic statutes that control the fundamentals of purchasing and contracting.
- Describe the Federal Acquisition Regulatory system—its sources, maintenance, supplements, and usage.

Lesson 4 — Acquisition Roles and Responsibilities within an Agency (the Players)

At the end of this lesson the trainee should be able to:

- Describe a typical approach to organizing the acquisition function within a department or agency.
- Define the Law of Agency.
- Identify and define the roles and responsibilities of contracting officers, other contracting personnel, requirements managers, contracting officer representatives, and other interested parties.

Lessons 5 Through 9 — Overview of the Federal Acquisition Process

At the end of this lesson the trainee should be able to identify the principal Contracting functions, duties, and related business issues.

Lesson 10 — Standards of Conduct

At the end of this lesson the trainee should be able to:

- Identify standards of conduct that apply to the acquisition process.
- Recognize prohibited activities
- Identify the penalties for prohibited conduct.

Instructional methods

Since the principal purpose of the course is to convey a substantial amount of knowledge in a short time, lecture/discussion is the primary method. In contrast, "Introduction to Contracting" (formerly "Basic Procurement")—designed for entry-level acquisition personnel and a full week in length—relies more heavily on case studies, roleplaying, reading assignments—including in-class reading periods—and interactive viewgraphs.

FORMAT OF THE INSTRUCTOR GUIDE

TOPIC: .c. 7.1.1.5 BONDS

Ref: Pages 7-12 to 7-14

Objective: When you finish Section 7.1.1.5, your students must be able to:

- Define “bond” and describe types of bonds.
- Identify situations in which a bond might be necessary.

Time: 9:40 — 10 Minutes

Method: Lecture/Discussion.

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 7-10	<p>a. Define “bond” and lead students through the sample bond (CM 7-10).</p> <p>“A bond is a written instrument executed by an offeror or contractor (the “principal”) and a second party (the “surety”) to assure fulfillment of the principal’s obligations to the Government). If the principal fails to meet a covered obligation, the surety has to cover the Government’s loss to the extent stipulated in the bond.”</p> <p>Bonds protect the Government against such risks as:</p> <ol style="list-style-type: none"> 1. Withdrawal of a bid by the apparent winning bidder 2. Failure to complete the work of the contract. 3. Failure by the contractor to pay subcontractors. <p>b. Describe conditions under which COs require offerors to submit bonds.</p> <p>Bonds are required for construction contracts in the U.S. over \$25,000. For other contracts, bonds are used only when deemed necessary by the CO.</p> <p>c. Question : Should Jones require offerors to submit bonds for the Smoketown upgrades? [Solicit answers from the class before providing your own]</p> <p>Answer: No. The question is whether the risk of default is high enough to make bonds a worthwhile investment. Jones has decided against any bonding requirement because firms in this market have generally had a good track record for honoring their obligations.</p>	Ω

KEY TO THE FORMAT

∂ Each lesson begins with a topic.

Σ The Ref (i.e., reference) is to the corresponding chapter or pages from the text/reference.

Π This identifies learning objective(s) related to the topic.

π This identifies the starting time for coverage of the topic (e.g., 9:40 AM) and the amount of time budgeted for the topic (e.g., 10 minutes).

⑤ This is the method for instructing this lesson.

⑥ This column provides occasional references to pages from the text/reference.

This column also contains icons (see the following page for a catalog of icons and the definition of each).

⑦ This column presents the teaching points, information to support the teaching points, and transitions.

Ω This column for the most part is blank. Please feel free to add your own personal notes to your copy of the Instructor Guide.

⑨ This is a teaching point. You are responsible for covering all such points.

⑩ This is information to support the teaching point. We have tried to provide all the information necessary for each teaching point, so that you will not have to do additional research to teach the "Federal Acquisition Process." However, you should try to convey this information in your own words. More importantly, we strongly encourage you to weave in your own examples and draw on your own experience in presenting the teaching point.

INSTRUCTOR GUIDE

ICONS

The icons used in this instructor guide are shown below:

Show viewgraph

Show interactive viewgraph

Instructor note of special significance



Roleplay

Use chalkboard/flipchart



Group Exercise



Question/Answer Sessions

INTERACTIVE VIEWGRAPHS

Note that one of the icons cited above is to indicate an "interactive viewgraph."

An interactive viewgraph is a slide on the overhead projector that requires a response from the class. For example, if you are showing a decision table, the "then" side would be empty and the students would help you fill out the answers. Or perhaps the slide asks a particular question about a list of conditions shown on the slide.

PREPARING TO TEACH THE FEDERAL ACQUISITION PROCESS (FAP)

- To teach this version of FAP for the first time, you should plan 20 to 40 hours of preparation. You will not need this time to research and build your own detailed lecture notes. This Instructor Guide is complete with all the instructional materials necessary to deliver the course. Rather, you will need the time to become thoroughly familiar with the Text/Reference and this Instructor Guide.
- Feel free to annotate and otherwise mark up the Instructor Guide.
- Build your own examples for teaching points.
- Draw on any supplementary materials available to you. For example, bring a copy of an RFP for the class to peruse.
- Review the attendance roster prior to class to evaluate the makeup of the group (i.e., organization unit, grade level, etc.). Continue to evaluate for experience and ability level throughout the course. Use this information to form study/work groups as needed.
- Arrange for the necessary training aids:
 - Viewgraphs and overhead projector
 - Viewgraph markers
 - Flipchart and markers
 - Chalk for the chalkboard
- Examine the classroom before the students arrive, preferably no later than the day before. Make certain there is a table upon which you can place all your materials. Make sure the location of your table and/or podium is visible by all students. Make certain there is sufficient room for you to move easily among the several tables to assist individuals as needed.

INSTRUCTOR GUIDE

TIPS ON CONDUCTING THE COURSE

- Time management is critical. Stick to the schedule. Move the class along. If questions are asked on Monday that pertain to topics to be covered on Tuesday, defer answering the questions until Tuesday.
- Remember to get the completed course evaluation form from all students.

EVALUATING YOUR PERFORMANCE

The following are among the criteria for evaluating your performance.

- Accomplishment of the learning objectives.
- Coverage of all teaching points.
- Effectiveness in presenting the lectures and leading discussions.
- There is no examination.

TIME	LESSONS
Day One	
8:00 AM (40 mins)	Preface
8:40 AM (60 mins)	Lesson 1 — Goals of the Federal Acquisition Process
9:40 AM (20 mins)	Break
10:00 AM (30 mins)	Lesson 2 — Organizational Roles and Responsibilities (Political Environment)
10:30 AM (90 mins)	Lesson 3 — Basic Statutes and Regulations (Legal Environment)
12:00 PM (60 mins)	Lunch
1:00 PM (40 mins)	Lesson 4 — Acquisition Roles and Responsibilities Within an Agency (Internal Environment)
1:40 PM (30 mins)	Lesson 5 — Introduction to the Acquisition Process
2:10 PM (20 mins)	Break
2:30 PM (60 mins)	Lesson 6 — Presolicitation Phase
Day Two	
8:00 AM (60 mins)	Lesson 6 — Presolicitation Phase (con't)
9:00 AM (60 mins)	Lesson 7 — Solicitation and Award Phase (con't on next page)
10:00 AM (20 mins)	Break

TIME	LESSONS
10:20 AM (80 mins)	Lesson 7 — Solicitation and Award Phase (Con't)
11:40 AM (60 mins)	Lunch
12:40 PM (80 mins)	Lesson 8 — Post Award Administration Phase
2:00 PM (20 mins)	Break
2:20 PM (40 mins)	Lesson 9 — Modifications, Terminations, and Claims
3:00 PM (20 mins)	Lesson 10 — Standards of Conduct

PREFACE

The Federal Acquisition Process


TOPIC: PREFACE**Ref:** Preface**Objective:** When you finish this lesson, your students must be able to:

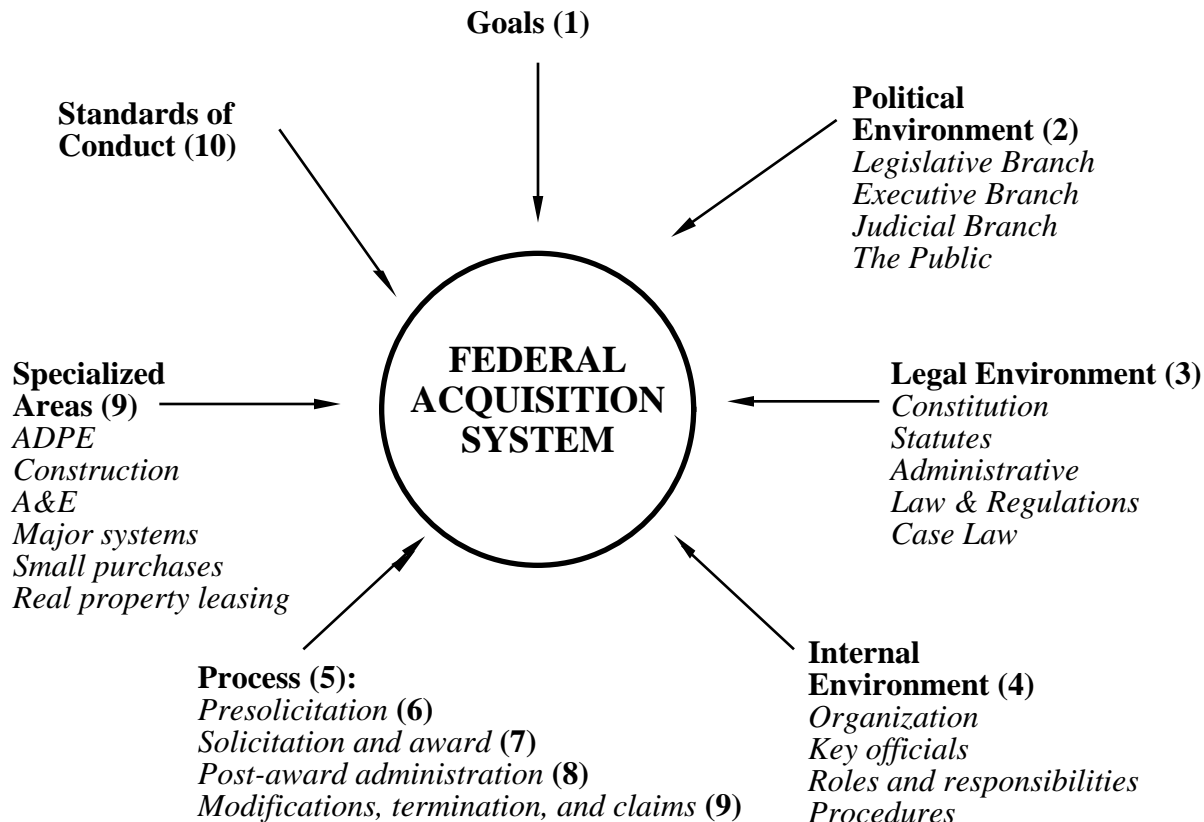
- Identify the basic components of the Federal acquisition process.
- Define significant terms used in Federal contracting.
- List and describe the essential elements of a contract.
- Describe how a contract is discharged.

Time: 8:00 AM — 40 Minutes**Method:** Lecture/Discussion**COURSE INTRODUCTION**

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. State the title of the course.</p> <p>c. Introduce yourself.</p> <p>d. Introduce the physical environment for the learning.</p> <ul style="list-style-type: none"> • Parking. • Restrooms. • Eating facilities. <p>e. Introduce the Text/Reference.</p> <p>f. Explain that this course is an overview of the Federal Acquisition Process, for mid-level managers in fields other than Contracting .</p> <p>g. Present the basic schedule for the course.</p> <ul style="list-style-type: none"> • 8:00-3:30, two days. • One hour for lunch. • Two breaks of 20 minutes each, one in the morning and one in the afternoon. 	

COMPONENTS OF THE FEDERAL ACQUISITION PROCESS

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG P-1: The Federal Acquisition System. The numbers represent the chapters in which each component is discussed.	



VG P-1

b. Focus of this course:


- Goals.
- Political Environment.
- Legal Environment.
- Internal Environment.
- Standards of Conduct.

This course also provides a short overview of the Federal Acquisition process, highlighting the most fundamental business issues and decisions.

KEY TERMS

Ref.	Steps In Presenting The Topic	Instructor Notes
P-3 to P-4	<p>a. Define “acquisition”</p> <p>FAR 2.1: “Acquisition means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated.”</p> <p>b. Define “contract”</p> <p>FAR 2.1: “Contract means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them.”</p> <p>c. Point out the other terms that are defined on pages P-3 to P-4.</p>	

ELEMENTS OF A CONTRACT

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG P-2: Elements of a Contract.	

ELEMENTS OF A CONTRACT

- Offer
- Acceptance
- Consideration
- Execution by Competent Parties
- Legality of Purpose
- Clear Terms and Conditions

VG P-2

b. Define “offer”

An offer is a firm proposal, made by one person to another, with the intent to create a legal (contractual) relationship if the offer is accepted.

c. Define “acceptance”

The act of accepting the offer. To be binding, the acceptance must be definite; it must be communicated, and it must be unconditional.

d. Define “consideration”

Something of value that changes hands between the parties to a contract. For example, the contractor provides supplies or services for which the Government pays money to the contractor.

e. Define “competent parties”

The two (or more) parties to a contract must be legally competent to enter into contracted relationships. This means that the parties must be of sound mind, are not under the influence of drugs or alcohol, and are legal entities.

ELEMENTS OF A CONTRACT

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Define “legality of purpose?”</p> <p>The purpose or subject matter of the contract must be legal.</p> <p>g. State the meaning of “clear terms and conditions?”</p> <p>For a contract to be enforceable, its terms and conditions must be clear enough to permit the courts to conclude that a contractual agreement was intended.</p> <p>h. Summarize the elements of a contract, from the perspective of the Federal acquisition process.</p> <ul style="list-style-type: none"> • In Federal contracting (other than small purchases), the Government generally solicits offers from private sector vendors. This puts the Government in a position of accepting or rejecting the offers. • Consideration is generally in the form of money paid by the Government in consideration for services rendered or supplies delivered. Bear in mind that the Government must receive benefit from every contractual agreement, including agreements to change the terms and conditions of an existing contract in any way that affects the substantive rights of the parties (e.g., extending the delivery date). • With respect to contractual capacity, the most common issue is whether a Federal employee has contractual authority as an agent of the Government to enter into a contract or to order a change in the terms and conditions of an existing contract. We will discuss Agents and the Law of Agency in Lesson 4. • Legality of purpose can be an issue. Absent a court order, for instance, the Government may not contract with a private vendor to bug the headquarters of the Socialist Workers party. • Terms and conditions must be clear. Unfortunately, disputes over contract language have been common enough to warrant the establishment of a formal procedure for resolving such disputes—which will be discussed in Lesson 9. 	

DISCHARGE OF A CONTRACT

Ref.	Steps In Presenting The Topic	Instructor Notes
P-6	<p>a. Transition— Once a contract has been signed, when does it conclude? The answer is that a contract concludes when it has been discharged.</p> <p>b. Define “discharge”</p> <p style="padding-left: 40px;">The obligation incurred by each party when it entered into the agreement has been excused; the parties are no longer bound to perform.</p> <p>c. Identify three ways in which a contract may be discharged:</p> <ul style="list-style-type: none"> • Performance by both parties (either complete or substantial). • Mutual rescission of the contract (e.g., both parties agree to back out). • Substitution of a new contract for an old contract (in Federal contract law, known as a contract modification). Examples: <ul style="list-style-type: none"> - Novation agreements, which substitute one party for another. - Supplemental agreements, in which the parties agree to delete, change, or add to the original terms and conditions (thus discharging their respective obligations to comply with the original terms). <p>d. Identify additional ways in which a contract may be discharged (over and above what is in the textbook). Examples:</p> <ul style="list-style-type: none"> • Impossibility of performance. • Commercial impracticability. • Bankruptcy (which generally relieves the debtor of contractual obligations to its creditors). • Anticipatory repudiation by one of the parties (which discharges the obligations of the other party). • Material breach by one of the parties (which also discharges the obligations of the other party). 	

DISCHARGE OF A CONTRACT

Ref.	Steps In Presenting The Topic	Instructor Notes
	<ul style="list-style-type: none"> • Non-occurrence of a condition precedent to performance.¹ Suppose you signed a service contract under which you must pay a flat fee of \$100 for repairs each time the equipment breaks down. In this contract, performance is conditional on the occurrence of a malfunction. If the equipment does not malfunction during the year, both parties are discharged from their obligations to one another). <p>TRANSITION TO LESSON 1</p> <p>“Now you know the definition and elements of a contract. But why does the Government write contracts? What do we hope to gain? And how do you know whether or not the contract has best served the public interest?”</p>	

¹In Federal contract law, where performance is conditional upon placement of an order under a requirements contract or upon the exercise of an option—topics that will be discussed in Lesson 7.

LESSON 1

GOALS OF THE FEDERAL ACQUISITION PROCESS

Goals of the Federal Acquisition Process

TOPIC: GOALS OF THE FEDERAL ACQUISITION PROCESS

Ref: Chapter 1


Objective: When you finish this lesson, your students must be able to:

- Identify and define the goals of the Federal acquisition process.

Time: 8:40 AM — 60 Minutes

Method: Lecture/Discussion.

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
1-1 to 1-16	1.2 PREAWARD GOAL  a. Show VG 1-1: Goals of the Federal Acquisition Process (Preaward). State the goals but do not define quality, timeliness, cost, et. al. at this point. Stress that these goals apply to all Federal players in the process (e.g., contracting officers, requirements managers, auditors, budget officers, etc.). Use these goals to judge their contribution. Define “Optimum” in terms of trying to accomplish all of these goals at the same time, while recognizing that there may be tradeoffs between some of the goals.	

GOALS OF THE FEDERAL ACQUISITION PROCESS

Preaward Goals

- Obtain the optimum market response to requirements for supplies/ services, in terms of:
 - Quality
 - Timeliness
 - Cost
- While:
 - Accomplishing socioeconomic objectives
 - Minimizing business and technical risks
 - Maximizing competition
 - Maintaining integrity

VG 1-1


1.2. PREAWARD GOAL

Ref.	Steps In Presenting The Topic	Instructor Notes
1-4 to 1-5	<p>b. Define “Quality” and identify the "bottom line" on quality.</p> <p>Quality is a function of the actual minimum need of the Government. Bottom Line: Does the deliverable, after it is put into use by the Government, accomplish the function for which it was acquired?</p>	
1-5	<p>c. Define “Timeliness.” Identify variables that affect the time required for an acquisition.</p> <p>“Timeliness is a question of whether the end user in fact has the supply on hand or the benefit of the service when, and where, and as required for his or her mission.”</p> <p>Note that acquisition leadtime includes the time required to:</p> <ul style="list-style-type: none"> • Prepare specifications and purchase descriptions. • Obtain funding and administrative approvals for purchase requests. • Solicit offers, make source decisions, and award contracts. • Complete, inspect, and accept the work. • Receive, store, and inventory supplies. • Physically distribute supplies to the end users.” 	

1.2. PREAWARD GOAL

Ref.	Steps In Presenting The Topic	Instructor Notes
1-6	<p>d. Define “Cost.” Identify types of acquisition-related costs to the taxpayer over and above the price of the contract.</p> <p>“Cost includes the total amount of money expended by the Government for the acquisition. It includes:</p> <ul style="list-style-type: none"> • The contract price. • Any direct cost of acquiring the item that is not covered in the contract price (e.g., transportation or installation). • Costs of ownership (e.g., inventory, spares, maintenance, repairs, training, etc.), to the extent not covered in the contract price. • The Government's overhead for awarding and administering the contract.” 	
1-6 to 1-8	<p>e. Define “Risk”. Provide examples of solicitation provisions and contract clauses meant to mitigate risks to the Government, or the the contractor, or to both.</p> <p>“Risk represents the probability that the Government will:</p> <ul style="list-style-type: none"> • Never see an acceptable deliverable. • Accept a deliverable that does not in fact satisfy the end user's actual need. • No longer need the deliverable by the time the user receives it. • Pay more than a reasonable price for the work.” <p>Exhibit 1-4 on page 1-8 lists a few of many, many provisions, clauses, and forms that have been designed largely for the purpose of minimizing such risks.</p>	

1.2. PREAWARD GOAL

Ref.	Steps In Presenting The Topic	Instructor Notes
1-8 to 1-10	f. Define “Socioeconomic Objectives” Socioeconomic Goals are established by the Congress to accomplish such purposes as illustrated in VG 1-2.	
	g. Show VG 1-2: Socioeconomic Objectives. This viewgraph lists a few examples of socioeconomic objectives.	

SOCIOECONOMIC OBJECTIVES

Examples:


- Use small and small/ disadvantaged business firms
- Use business firms in labor surplus areas
- Pay prevailing wages
- Clean the environment
- Provide employment opportunities for Americans
- Ensure equal employment opportunity
- Get drugs out of the workplace

VG 1-2

1-10	h. Define “maximizing competition” as a goal. “Maximizing competition means: <ul style="list-style-type: none"> • Obtaining independent offers from two or more vendors for each acquisition. • Building and maintaining a base of responsible suppliers willing and able to compete . • Encouraging those suppliers to invest in new manufacturing technologies and product innovation where such investments would benefit Government missions • Broadening the industrial and mobilization base, in the event that the Government needs to rapidly build up the armed forces.” 	
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1.2. PREAWARD GOAL		
Ref.	Steps In Presenting The Topic	Instructor Notes
1-11	<p>i. Define “maintaining integrity” as a goal.</p> <p>“Integrity means dealing fairly and in good faith, and maintaining impartiality and avoiding preferential treatment.”</p> <p>Explain that Lesson 10 deals extensively with ethics, conflicts of interest, and other matters that, collectively, relate to integrity.</p>	
1-11 to 1-16	<p>j. State that COs rarely can max every goal. Instead, COs generally have to make tradeoffs between goals.</p> <p>k. Provide examples.</p> <p>One example: Under the Buy American Act, contracting officers may pay up to 6% more for a domestic product than for a foreign-made product. This helps accomplish the goal of saving American jobs—at the expense of the goal of minimizing the cost of the acquisition.</p> <p>l. State that the success of an acquisition can be measured in part by the degree to which the contract represents the best market response to the Government's requirement—all seven goals of the process taken as a whole.</p>	

1.3 POSTAWARD GOAL

Ref.	Steps In Presenting The Topic	Instructor Notes
 1-16	a. Show VG 1-3: Goals of the Federal Acquisition Process (Postaward). b. State that Lessons 8 and 9 will cover the implementation of these goals.	

GOALS OF THE FEDERAL ACQUISITION PROCESS


Postaward Goals

Assure that purchased supplies/ services are:

- Delivered or performed when and where specified in the contract.
- Acceptable, in terms of conforming to the contract's specifications or statement of work
- Furnished in compliance with other terms and conditions of the contract

VG 1-3

1.4 ENVIRONMENTAL FACTORS

Ref.	Steps In Presenting The Topic	Instructor Notes
 1-16	a. Show VG 1-4: Environmental Factors. b. Explain that the Government's ability to accomplish the acquisition process goals and objectives is a function of environmental opportunities, trends, and constraints.	

ENVIRONMENTAL FACTORS

- Political
- Legal
- Internal
- Market

VG 1-4

TRANSITION TO LESSONS 2, 3, and 4

“Lesson 2 covers the Political Environment—namely, the different branches of Government and their respective roles in the acquisition process.

“Lesson 3 focuses on the Legal Environment—namely, the statutory and regulatory foundations of the Federal acquisition system.”

“Lesson 4 covers the Internal Environment—namely, how agencies organize to acquire goods and services and the officials employed by agencies to manage those acquisitions.

“Lessons 5-9 will give you insight into how the Market Environment influences what and how the Government buys.

Goals of the Federal Acquisition Process

LESSON 2

ORGANIZATIONAL ROLES AND RESPONSIBILITIES

Organizational Roles and Responsibilities

TOPIC: ORGANIZATIONAL ROLES AND RESPONSIBILITIES

Ref: Chapter 2

Objective: When you finish this lesson, your students must be able to:

- State the role of the legislative branch relative to the acquisition process.
- State the role of the executive branch relative to the acquisition process.
- State the role of the judicial branch relative to the acquisition process.
- State the role of the public and non-Government organizations in the acquisition process.

Time: Break before—Resume at 10:00 30 minutes.

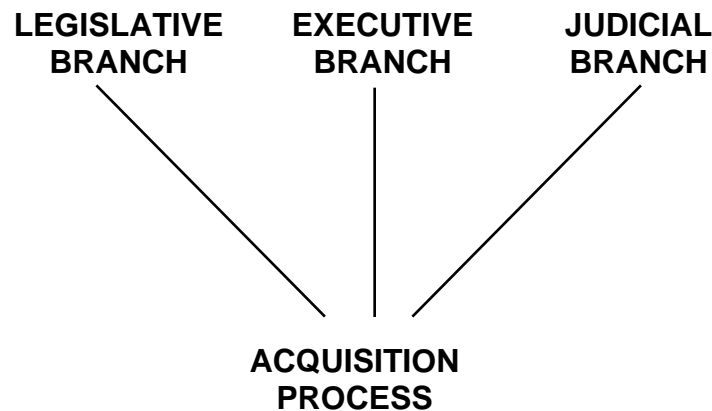
Method: Lecture/Discussion and Case Study.

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
2-1 to 2-3	CHAPTER INTRODUCTION a. Show VG 2-1: Government Affects Acquisition Process. Explain that, as prescribed by the Constitution, responsibility for Federal acquisition is divided among the legislative, the executive, and the judicial branches of Government.	




GOVERNMENT AFFECTS ACQUISITION PROCESS



VG 2-1

2.1 THE LEGISLATIVE BRANCH

Ref.	Steps In Presenting The Topic	Instructor Notes
2-2 to 2-9 	a. Show VG 2-2: Legislative Branch (Congress).	

LEGISLATIVE BRANCH (CONGRESS)

Roles Relating to Acquisition:

- Passes Laws
- Appropriates Money


VG 2-2

b. Describe the legislative process.

State that the Congress passes bills which, when signed by the President, become Public Laws (also known as statutes). Among other things, such laws establish or constrain policies and procedures for the Federal acquisition system.

Laws on the acquisition process will be discussed in Lesson 4.


2.1 THE LEGISLATIVE BRANCH

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>c. Using a flipchart, draw and present the budget timeline.</p> <p><u>Budget Formulation</u></p> <p>Longrange budget estimates—5 year forecasts of acquisition requirements for the President's Guidelines</p> <p>Spring: President issues Budgetary Guidelines.</p> <p>Summer: Agencies prepare budget requests based on Guidelines</p> <p>Fall: OMB review</p> <p><u>Authorization & Appropriations</u></p> <p>January: President proposes</p> <p>Jan to Oct: Congress disposes</p> <p><u>Budget Execution & Control</u></p> <p>October 1 to September 30</p> <ul style="list-style-type: none"> • Funds apportioned • PRs prepared • Contracts awarded; \$ obligated <p><u>Review and Audit</u></p> <p>Starting in the FY and stretching into the following FYs</p> <ul style="list-style-type: none"> • Contract work completed; outlays made • Oversight by IGs, OMB, GAO, Cong committees 	

2.1 THE LEGISLATIVE BRANCH

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Describe the impact of the budget process on the acquisition process.</p> <ul style="list-style-type: none"> • Forecasts of acquisition requirements and costs are made years before Purchase Requests reach contracting activities. In Lesson 6, we'll talk about the potential contribution of COs if invited into the process of forecasting requirements • Congress votes authority to obligate funds. Obligations are legally binding commitments made by Federal officials that will require cash outlays in some future period. Example: A contract. • Requiring activities usually don't see their money on October 1. Even when the appropriations are approved prior to the FY, the funds still have to go through the apportionment and allotment process within the Executive Branch. This means that PRs for major requirements may not reach the contracting activity for months after the start of the FY. • Budget authority generally comes with enough strings to bind a Gulliver. The most common string: One year money (i.e. money that must be obligated prior to September 30 of that same fiscal year). • To counter complaints about year end spending, there are often requirements at the agency level to obligate funds even earlier—by the end of the 3rd. quarter. This narrows your window for preparing the contract all the more. • Nonetheless, there are many people on the sidelines ready to skewer you if haste makes waste. <p>e. Describe the role of GAO as one of the Congressional tools for oversight.</p> <ul style="list-style-type: none"> • Performs audits and investigations of agency programs and management. • Investigates program and contract fraud, and the efficiency and effectiveness of program management. • Comptroller General recommends decisions to agency heads on most protests filed against the Government pertaining to the award or non-award of contracts. 	

2.2 THE EXECUTIVE BRANCH

Ref.	Steps In Presenting The Topic	Instructor Notes
2-9 to 2- 12 	a. Show VG 2-3: Executive Branch.	

EXECUTIVE BRANCH (THE PRESIDENT)


Roles Relating to Acquisition:

- Develops plans, programs, and budgets for consideration by Congress
- Executes budgets and implements Congressional authorized plans and programs
- Supplements and augments statutory acquisition policies
- Develops and maintains the Federal acquisition regulatory system

VG 2-3

	<p>b. List the principal individuals and organizations in the Executive branch which have a role in the acquisition process.</p> <ul style="list-style-type: none"> • The President • The OMB • The Office of Federal Procurement Policy • Boards of Contract Appeals • The Federal Acquisition Regulatory Council • The Attorney General of the United States • Executive Agency Heads 	
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2.3 THE JUDICIAL BRANCH AND 2.4 THE PUBLIC


Ref.	Steps In Presenting The Topic	Instructor Notes
2-12 to 2-13 	a. Show VG 2-4: Judicial Branch (The Courts).	

JUDICIAL BRANCH (THE COURTS)

Roles Relating to Acquisition:

- Give meaning to (or serve to interpret):
 - laws passed by the legislative branch, or
 - policies and regulations originated by the executive branch
- Render decisions pertaining to the terms and conditions of a specific contract
- Ensure the constitutionality of the laws and interpret the laws

VG 2-4

	b. Identify the 3 courts that hear cases involving Federal contracts: <ul style="list-style-type: none"> • The U.S. Claims Court. • The U.S. Court of Appeals for the Federal Circuit. • The Supreme Court. 	
	c. Show VG 2-5: Public Participation.	

PUBLIC PARTICIPATION

Roles Relating to Acquisition:

- Influence Congress to pass or alter legislation
- Comment on proposed Federal rules
- Participate in the acquisition process as suppliers
- Are clients of Federal programs and contracts that support those programs

VG 2-5

2.3 THE JUDICIAL BRANCH AND 2.4 THE PUBLIC		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Identify types of publics:</p> <ul style="list-style-type: none"> • Trade associations • Professional societies • Lobbying groups • Companies • Individuals <p>TRANSITION TO LESSON 3</p> <p>“Lesson 3 focuses on the Legal Environment—namely, the statutory and regulatory foundations of the Federal acquisition system.”</p>	

Organizational Roles and Responsibilities

LESSON 3

BASIC STATUTES AND REGULATIONS

Basic Statutes and Regulations

TOPIC: BASIC STATUTES AND REGULATIONS

Ref: Chapter 3

Objective: When you finish this lesson, your students must be able to:

- Identify and describe the four principal sources of Federal Contract Law.
- Identify the basic statutes that control the fundamentals of purchasing and contracting.
- Describe the Federal Acquisition Regulatory system—its sources, maintenance, supplements, and usage.

Time: 10:30 AM — 90 Minutes

Method: Lecture/Discussion.

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
3-1 to 3-2	<p>CHAPTER INTRODUCTION</p> <p>a. State that the Government's ability to procure supplies/ services rests upon law and is limited by law.</p> <p style="padding-left: 40px;">There are hundreds of statutes and thousands of pages of regulations that control or affect the process.</p> <p>b. State that this lesson presents:</p> <ul style="list-style-type: none"> • The Sources of Federal Contract Law • The Basic Statutes • The Federal Acquisition Regulatory System 	

3.1 THE SOURCES OF FEDERAL CONTRACT LAW

Ref.	Steps In Presenting The Topic	Instructor Notes
3-3 to 3-10	<p>a. Show VG 3-1: Sources of Federal Contract Law.</p> <p>Leave this VG on the screen as you present the sources.</p>	



SOURCES OF FEDERAL CONTRACT LAW

- The Constitution
- Statutes
- Administrative Law
- Common Law

VG 3-1

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>b. Describe the role of the Constitution as a source of Federal contract law.</p> <p>In 1831 (U.S. vs. Tingey), the Supreme Court declared that the Federal Government has:</p> <ul style="list-style-type: none"> • Inherent power, based on sovereignty, to enter into contracts, and • Implied powers, as necessary to the proper performance of its duties <p>The Court also stated guidelines to determine the validity of a Government contract:</p> <ul style="list-style-type: none"> • Is the Government authorized to act? • Is the act performed by someone having the authority to act? <p>c. Define “statutes”.</p> <p>A statute is a law enacted by the legislative branch of Government and signed by the President. The statute is identified by its public law number.</p> <p>State that, later in the lesson, you'll present the basic statutes that govern the Federal acquisition process.</p>	

3.1 THE SOURCES OF FEDERAL CONTRACT LAW


Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Define “administrative law,” in terms of the Federal acquisition process.</p> <p>For the purposes of Federal contract law, administrative law consists of:</p> <ul style="list-style-type: none"> • Executive Orders signed by the President. • Decisions by Boards of Contract Appeals. • Decisions by the Comptroller General and administrative law judges. • The "body" of rules and regulations. <p>e. Describe Executive Orders.</p> <p>Executive Orders are used to establish policies to be followed by the executive agencies. EO's stay in effect unless rescinded by the signing President or a successor President.</p> <p>f. Have the students turn to Exhibit 3-3 on pages 3-5 to 3-6 of the text/reference. Walk the class through this exhibit.</p> <p>g. Describe the role of the Board of Contract Appeals in terms of establishing precedents for interpreting contract clauses and FAR provisions.</p> <p>Board of Contract Appeals render decisions on disputes arising under contracts. If there is a disagreement between a contractor and an agency as to a contractual requirement in a contract, the contractor will ask the CO for a final decision. If the contractor is not satisfied by the decision, he/she can file an appeal with the appropriate BCA under the "Disputes" clause of the contract.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>h. Describe the role of the Comptroller General in terms of establishing precedents for interpreting acquisition-related statutes and FAR provisions.</p> <p>The Comptroller General (Comp. Gen.) recommends decisions on protests. The Comp Gen decisions are often cited as precedents.</p> <p>Point out that the General Services BCA has a comparable role with respect to protests of ADPE solicitations and awards.</p> <p>i. List some of the rules and regulations that apply to the Federal acquisition process.</p> <ul style="list-style-type: none"> • OFPP Policy Letters • The FAR and agency FAR Supplements. • GSA Supply and Procurement Regulations • Dept of Labor regulations • The Federal Information Resource Management Regulation • Rules of the GSBCA • The Federal Property Management Regulation <p>j. Have the students turn to Exhibit 3-4 on pages 3-8 to 3-9 of the text/reference. Walk the class through this exhibit.</p> <p>k. Point out that the Administrative Procedures Act requires the Government to publish most, but not all, administrative law in both the Federal Register and the Code of Federal Regulations.</p> <p>l. Define common law.</p> <p>Decisions handed down by judges in courts of law that establish precedents.</p>	

3.2 BASIC STATUTES

Ref.	Steps In Presenting The Topic	Instructor Notes
3-10 to 3-20	<p>a. Identify the four, most comprehensive statutes on the Federal acquisition system.</p> <ul style="list-style-type: none"> • The Armed Services Procurement Act (title 10 of the U.S. Code, §2301 et. seq.) • The Federal Property and Administrative Services Act (title 41 of the U.S. Code, §201 et. seq.) • The Small Business Act (title 15 of the U.S. Code, §631 et. seq.) • The Office of Federal Procurement Policy Act (title 41 of the U.S. Code, §401 et. seq.) <p>b. State that, in addition to the four statutes previously mentioned, there are hundreds (or, by some accounts, thousands) of other statutes that apply to one or more aspects of Federal procurement.</p>	

3.3 THE FEDERAL ACQUISITION REGULATORY SYSTEM

Ref.	Steps In Presenting The Topic	Instructor Notes
3-20 to 3-23	a. Show VG 3-2: The Federal Acquisition Regulatory System	
		

THE FEDERAL ACQUISITION REGULATORY SYSTEM


FAR + Agency Supplements to the FAR +

Internal Agency Guidance
including:

- Delegations of authority,
- Assignments of responsibility,
- Work-flow procedures,
- Internal reporting requirements

= The Federal Acquisition Regulatory System

VG 3-2

	b. Show VG 3-3: Sources of the FAR.	
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SOURCES OF THE FAR


DAR + FPR merged to become the FAR

Also included: NASA procurement regulations and procurement regulations of other executive agencies

VG 3-3

c. Explain that the FAR was created to present one, Governmentwide face to industry—given industry complaints about having to learn one set of acquisition procedures when selling to the Department of Defense, for example, and another when selling to Commerce.

3.3 THE FEDERAL ACQUISITION REGULATORY SYSTEM

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. State that the FAR essentially compiles and consolidates the requirements of:</p> <ul style="list-style-type: none"> • Statutes • Executive Orders • OMB Circulars • OFPP Policy Letters • Policies from previously existing regulations (especially the DAR and FPR) • Agency policies subsequently adopted by the FAR • Decisions by the Comptroller General (head of the GAO), decisions by BCAs, the Courts, and case and common law. 	
	e. Show VG 3-4: The Federal Acquisition Regulatory System	

Maintenance of the FAR

Defense Acquisition Regulatory Council interacts with the Civilian Agency Acquisition Council

The Far Secretariat provides administrative support


VG 3-4

<p>f. Explain that the FAR is maintained by two separate councils: The Defense Acquisition Regulatory Council and The Civilian Agency Acquisition Council.</p> <p>The two councils have divided the FAR into halves, with each responsible for maintaining one of the halves.</p> <p>Each council considers FAR cases involving its respective half of the FAR. A FAR case is a proposed change to the FAR. When one council approves a FAR case, the case is referred to the second council for review and concurrence.</p>	
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3.3 THE FEDERAL ACQUISITION REGULATORY SYSTEM


Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>g. State the role of the FAR Secretariat.</p> <p>The FAR Secretariat provides administrative support. The Secretariat prints, publishes, and distributes the FAR.</p> <p>h. Describe FACs.</p> <p>After approval by the two councils, changes to the FAR are issued as Federal Acquisition Circulars (FAC).</p> <p>FACS are numbered consecutively as issued and are keyed to the last reissuance of the FAR.</p> <p>When the original (1984) edition was in use, FACS were numbered 84-XX (e.g., 84-56). Now that the 1990 edition of the FAR has been issued, FACs are numbered 90-XX (e.g., 90-1).</p> <p>FACs are distributed for insertion in the loose-leaf edition of the FAR.</p> <p>Because of statutory authorities held by them, the FACs must be "signed" by designees of the Secretary of Defense and the administrators of GSA and NASA.</p> <p>i. Describe FAR Supplements.</p> <p>Supplements are issued by individual departments and agencies. For example, GSA's FAR supplement is entitled the "General Services Administration Acquisition Regulation" or GSAR.</p> <p>Supplements generally include additional delegations of authority, policies, procedures, solicitation provisions, and contract clauses.</p> <p>Agency supplements should not:</p> <ul style="list-style-type: none"> • Unnecessarily repeat or paraphrase FAR material • Conflict or be inconsistent with the FAR. <p>j. State that, to make an acquisition decision, you must consult all of the following:</p> <ul style="list-style-type: none"> • The FAR • Your agency's FAR supplement • Internal guidance 	

3.3.4 USING THE FAR SYSTEM

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 3-5: FAR organization	

FAR ORGANIZATION	
Parts 1 - 4	Subchapter A — General
Parts 5 - 12	Subchapter B — Competition and Acquisition Planning
Parts 13 - 18	Subchapter C — Contracting Methods and Contract Types
Parts 19 - 26	Subchapter D — Socioeconomic Programs
Parts 27 - 33	Subchapter E — General Contracting Requirements
Parts 34 - 41	Subchapter F — Special Categories of Contracting
Parts 42 - 51	Subchapter G — Contract Management
Parts 52 - 53	Subchapter H — Clauses and Forms
Parts 54 - 99	Reserved

VG 3-5

3-24 to 3-26	<p>b. Describe the basic organization of the FAR.</p> <p>The FAR System is codified as Title 48 of the Code of Federal Regulations (CFR). The FAR itself is Chapter 1 of the CFR. Chapter 1 is divided into subchapters and parts, and is printed in two volumes.</p>	
	c. Show VG 3-6: Example of how the FAR is divided.	

EXAMPLE OF HOW THE FAR IS DIVIDED		
FAR DIVISIONS	FAR #	TITLE
Part	<u>14</u>	Sealed Bidding
Subpart	14. <u>1</u>	Use of Sealed Bidding
Section	14. <u>103</u>	Policy
Subsection	14.103- <u>1</u>	General

VG 3-6

3.3.4 USING THE FAR SYSTEM

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Describe the organization of agency supplements to the FAR.</p> <p>Explain that Chapters 2-59 of Title 48 of the CFR are reserved for the acquisition regulations of the executive agencies. Some examples are:</p> <ul style="list-style-type: none"> • DoD -- Chapter 2 • HHS -- Chapter 3 • GSA -- Chapter 5 • NASA -- Chapter 18 <p>Using the GSA as an example, GSAR (General Services Acquisition Regulation) implementations of the FAR are preceded by a 5. For example, FAR 6.304(a)(1) requires approval at a level above the CO. It is up to GSA to identify that level. In the GSAR, the coverage is at 506.304.</p> <p>If an agency needs to supplement the FAR, and there is no counterpart in the FAR, the agency will identify such material by the numbers "70" and up. For example, if the GSAR added something unique to FAR Subpart 6.3, it would be numbered in the GSAR as 506.370. A whole subpart added to FAR Part 6 would be numbered 506.70.</p> <p>TRANSITION TO LESSON 4</p> <p>“Lesson 4 focuses on the Internal Environment—namely, how agencies organize and staff for acquiring goods and services.”</p>	

LESSON 4

ACQUISITION ROLES AND RESPONSIBILITIES WITHIN AN AGENCY (THE PLAYERS)

Acquisition Roles and Responsibilities Within an Agency (The Players)

TOPIC: ACQUISITION ROLES AND RESPONSIBILITIES WITHIN AN AGENCY (THE PLAYERS)

Ref: Chapter 4

Objective: When you finish this lesson, your students must be able to:


- Describe a typical approach to organizing the acquisition function within a department or agency.
- Define the Law of Agency.
- Identify and define the roles and responsibilities of contracting officers, other contracting personnel, requirements managers, contracting officer representatives, and other interested parties.

Time: Lunch before: Resume at 1:00 PM — 40 Minutes

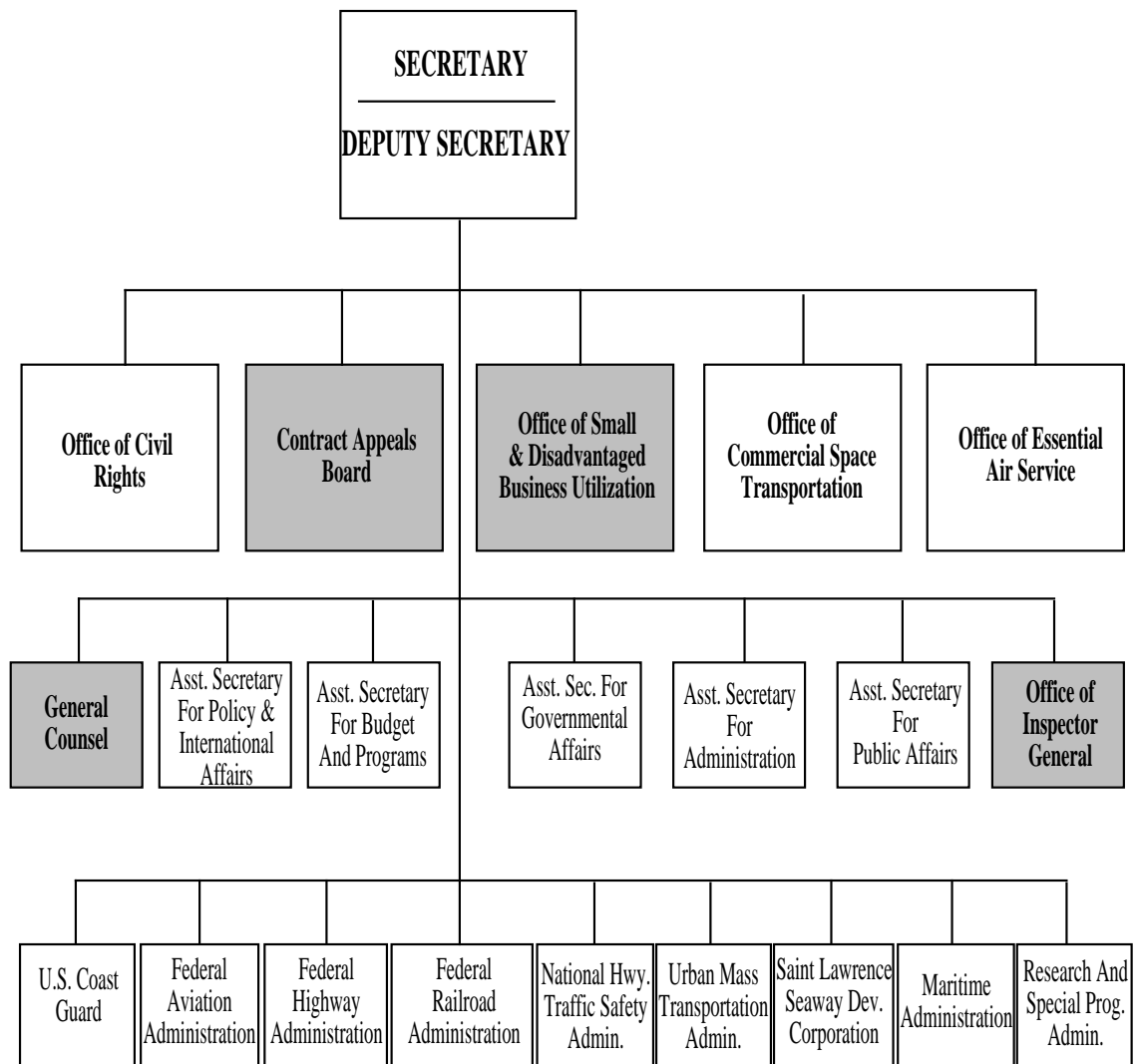
Method: Lecture/Discussion.

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
4-1 to 4-10	<p>4.1 TYPICAL ORGANIZATION WITHIN AGENCIES</p> <p>a. State that no two agencies are exactly alike in how they organize and staff the acquisition function.</p> <p>Explain that the specific acquisition roles and responsibilities of personnel vary from agency to agency.</p> <p>To fully understand your own position in relation to the acquisition system of the agency, you will therefore need to research your agency's:</p> <ul style="list-style-type: none"> • Mission • Organization charts • Delegations of authority • Supplement to the FAR 	


4.1 TYPICAL ORGANIZATION WITHIN AGENCIES

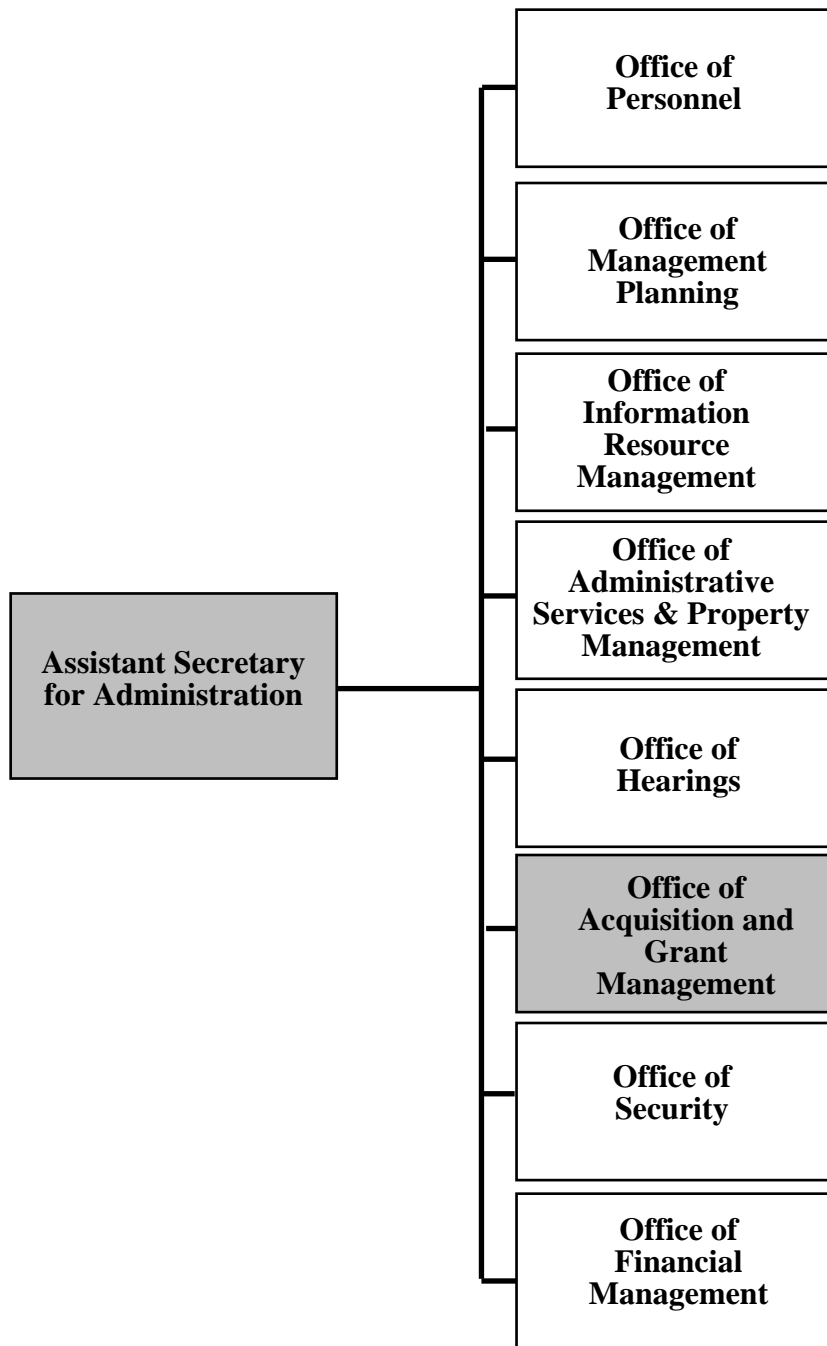
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>b. State that there are some semi-constants in how Federal departments and agencies organize and staff the acquisition system.</p> <ol style="list-style-type: none"> 1. The agency head establishes overall agency policy, appoints persons to fill key positions, and has "unlimited" procurement authority. <p>Among other duties, the agency heads are generally responsible for designating a Procurement Executive and a Competition Advocate. Explain that the senior procurement executive is often the highest level of acquisition/procurement authority within an agency. This person establishes major procurement policies and ensures compliance with them.</p> <ol style="list-style-type: none"> 2. Most agencies have a centralized acquisition policy office under the Procurement Executive. This office typically is responsible for such functions as: <ul style="list-style-type: none"> • Issuing the agency's FAR Supplement • Procurement Management Review [define] • Contract Clearance [define] • Career Management 3. Executive agencies also tend to have separate boards or offices for such functions as: <ul style="list-style-type: none"> • Contract Appeals • Small & Disadvantaged Business Utilization Advocates • Legal Counsel <p>Explain that parallel positions, offices, and organizations are often found in regional headquarters and in the headquarters of major suborganizations.</p> <ol style="list-style-type: none"> 4. Contracting offices tend to be located in the "administrative" chain of command for the organizations that they support. 	<p>Note—the roles of small business advocates and lawyers will be covered at a later point in this lesson.</p>
	<p>c. Show VG 4-1: The DOT Organization Chart.</p> <p>If students have trouble seeing this VG, have them look at Exhibit 4-2 in the text reference (page 4-4).</p> <p>Explain that the U.S. Department of Transportation (DOT) is an example of an agency with multiple missions. DOT will serve as an example of how the acquisition function is organized.</p>	

VG 4-1 U.S. Department of Transportation



4.1 TYPICAL ORGANIZATION WITHIN AGENCIES

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Identify offices within the Secretary's Office that have acquisition-related roles.</p> <ul style="list-style-type: none"> • The Contract Appeals Board • The Office of Small and Disadvantaged Business Utilization • The Office of Inspector General • The General Counsel's office. • The Assistant Secretary for Administration, to whom DOT's Procurement Executive reports 	<p>Note—the role of personnel in these offices will be covered at a later point in this lesson.</p>
	<p>e. Show VG 4-2: Asst Secretary for Administration Organization Chart (DOT).</p> <p>If students have trouble seeing this VG, have them look at Exhibit 4-3 in the text reference (page 4-5).</p> <p>In DOT, the Procurement Executive is the Director of Acquisition and Grant Management. The Competition Advocate is on the staff of the Office.</p>	

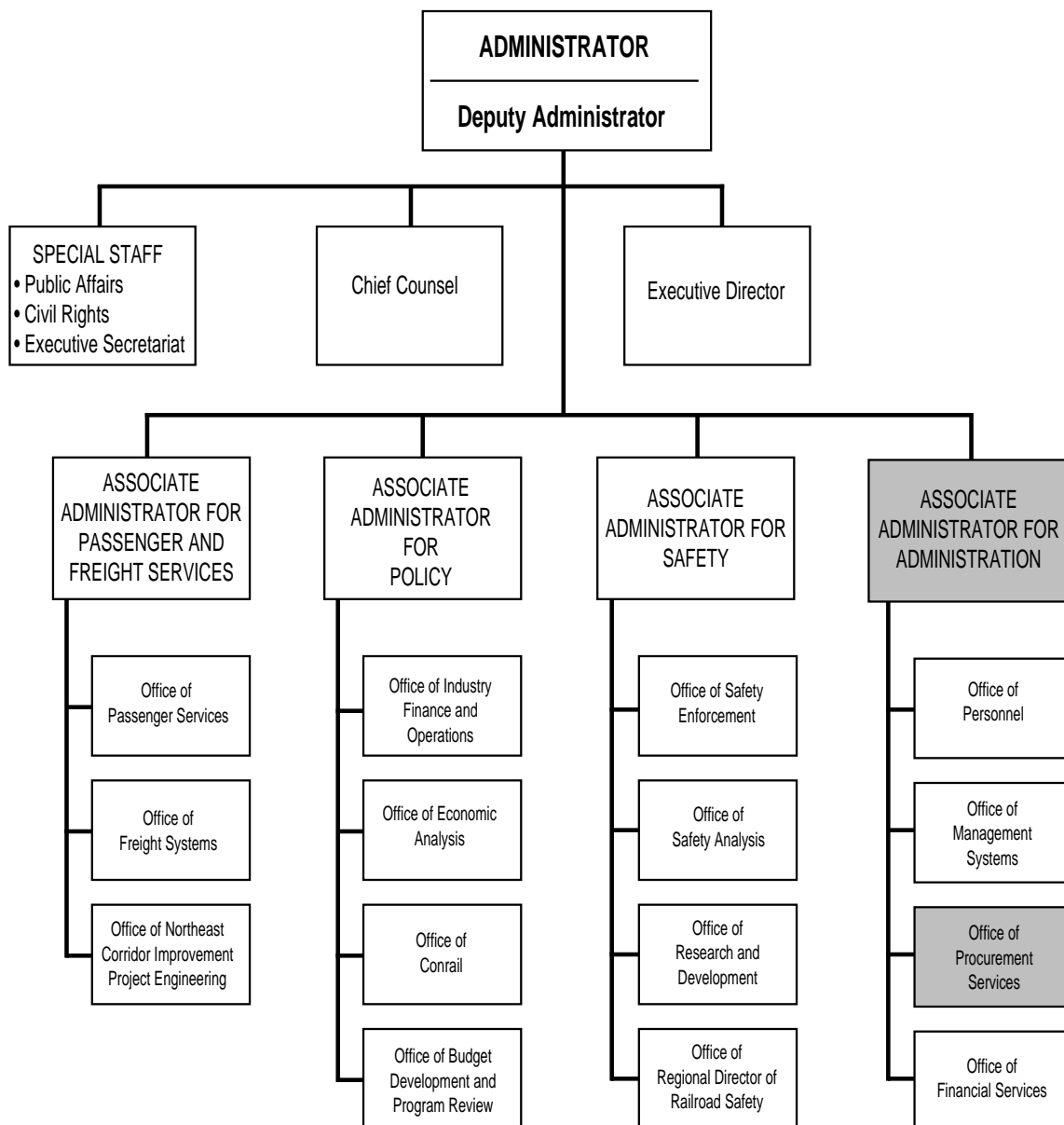




f. Show VG 4-3: Federal Railroad Administration.

If students have trouble seeing this VG, have them look at Exhibit 4-4 in the text reference (page 4-7).



VG 4-3 Federal Railroad Administration



4.1 TYPICAL ORGANIZATION WITHIN AGENCIES

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 342 1127 420">g. Describe how the Federal Railroad Administration has organized the acquisition function.</p> <p data-bbox="438 436 1127 688">Its contracting activity (i.e., Office of Procurement Services) is under the Associate Administrator for Administration. The Office of Procurement Services enters into contracts on behalf of the requiring activities within the Federal Railroad Administration (e.g., the Office of Research and Development, the Office of Northeast Corridor Improvement Project Engineering, etc.).</p> <p data-bbox="438 705 1127 835">Note that Office of Procurement Services works under the policies, reporting requirements, and regulatory controls that flow down from the Office of Acquisition and Grant Management.</p>	

4.2 KEY ACQUISITION PERSONNEL

Ref.	Steps In Presenting The Topic	Instructor Notes
4-10 to 4-16	<p>a. Define the “Law of Agency”.</p> <p>Under the law of agency, one party, known as the principal, appoints another party, known as an agent, to enter into a business or contractual relationship with a third party.</p>	
	<p>b. Question: “In Government contracting, who is the principal? Who is the agent? Who is the third party?” [Solicit answers from the class before providing your own]</p> <p>Answer: The Government is the principal, the contracting officer is the agent, and the third party is the contractor.</p>	
	<p>c. Stress that, for a Government contract to be valid, it must be entered into by a duly appointed CO acting within the scope of his or her authority.</p>	
	<p>d. Show VG 4-4, 4-4a, 4-4b, and 4-4c: Procurement Personnel.</p> <p>Keep the appropriate viewgraph on the screen as you discuss the role of each official.</p>	

PROCUREMENT PERSONNEL

VG4-4 Contracting Officers

- PCO
- ACO
- TCO

4-4a Contracting Personnel

- Contract Specialist
- Contract Negotiator
- Contract Administrator
- Contract Price/Cost Analyst
- Contract Termination Specialist
- Procurement Analyst

4-4b Contracting Officer Representatives

- COR
- COTR

4-4c Other Acquisition Personnel

- Program and Requirements Managers
- Quality Assurance Specialists
- Transportation, Logistics, and Supply Specialists
- Property Managers
- Auditors and Accountants

4-4d Other Acquisition Personnel (Con't)

- Legal Counsel
- Small Business Advocates
- Competition Advocates
- Other Interested Parties

VGs 4-4 through 4-4d

e. Describe the role and responsibilities of contracting officers.

Have the students turn to page 4-14 and read Exhibits 4-5 and 4-6. Note that Exhibit 4-5 is taken from FAR 1.602; Exhibit 4-6 from an occupational analysis of procurement-related tasks.

4.2 KEY ACQUISITION PERSONNEL

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Identify and define the different types of contracting officers.</p> <p>CO--Generalists who may perform the functions of PCOs, ACOs, and TCOs for assigned contracts.</p> <p>PCO--Procuring Contracting Officer. Manages the planning, solicitation and award of a contract; signs it.</p> <p>ACO--Administrative Contracting Officer. Administers a contract signed by the PCO (if assigned to do so).</p> <p>TCO--Termination Contracting Officer. When contracts are terminated for default or convenience, TCOs negotiate settlements, manage the termination, dispose of property, etc.</p> <p>g. Identify the occupational series of contracting officers.</p> <p>Other than for small purchases, explain that most contracting officers are in the Contract Specialist, GS-1102, series. However, some CO's have contracting authority because of their job (e.g., certain political appointees and military offices.). If the contracting officer's authority is limited to small purchases, the CO's position might be classified in the Purchasing, GS-1105 series.</p> <p>h. Describe Contract Specialists.</p> <p>Contract Specialists are Federal employees whose positions have been classified by OPM in the GS-1102 series. For the most part, personnel in such positions specialize in contracts for supplies and services that are awarded through the sealed bidding procedures of Part 14 of the FAR or through the negotiated procedures of Part 15.</p>	

4.2 KEY ACQUISITION PERSONNEL

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>i. List and define types of Contract Specialists.</p> <p>Per the classification standard for GS-1102 positions, the following are the titles assigned to personnel in such positions:</p> <ul style="list-style-type: none"> • Contract Specialists (cradle to grave). • Contract negotiator (pre-award). • Contract administrator (post-award). • Contract price/cost analysts. • Contract termination specialist (counterparts to TCOs; specialists in negotiating termination settlement proposals). • Procurement analyst (policy formulation and interpretation, contract clearance, procurement management review, procurement career management, etc.). <p>j. Describe Purchasing Agents.</p> <p>Purchasing Agents are Federal employees whose positions have been classified by OPM in the GS-1105 series. For the most part, personnel in such positions specialize in contracts for supplies and services that are awarded through the simplified purchasing procedures of Part 13 of the FAR or through the delivery orders against indefinite delivery contracts.</p> <p>k. Describe CORs and COTRs</p> <p>A contracting officer's representative (COR) or a contracting officer's technical representative (COTR) are delegated limited authority by contracting officers for certain contractual-related decisions. CORs often are employees of the requiring activity.</p> <p>Typical duties:</p> <ul style="list-style-type: none"> • Monitor technical performance by reviewing progress reports, making plant visits, etc. • Inspect deliverables and prepare receiving reports. • Compare progress with delivery schedules and cost objectives. • Advise the CO of any problems with performance. • Review technical issues in proposed contract modifications. 	

4.2 KEY ACQUISITION PERSONNEL

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>1. Describe Requirements Managers</p> <p>Requirements managers are generally responsible for a program. Among other things, this entails identifying the supplies or services that are needed to support the program. To the extent that such supplies and services must be obtained through the acquisition system, requirements managers are the direct clients of the contracting officer.</p> <p>m. Describe the role and responsibilities of quality assurance personnel.</p> <p>These personnel specialize in the functions of inspecting and accepting deliverables under Federal contracts.</p> <p>n. Describe the role and responsibilities of transportation managers .</p> <p>These personnel specialize in the functions of moving supplies from one location to another. Typical acquisition-related duties:</p> <ul style="list-style-type: none">• Ensure that contractors comply with transportation rules and regulations.• Determine the best shipping method.	

4.2 KEY ACQUISITION PERSONNEL

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 342 1105 422">o. Describe the role and responsibilities of logistics and supply managers .</p> <p data-bbox="440 436 1105 531">These personnel specialize in the functions of managing Federal inventories. Typical acquisition-related duties:</p> <ul data-bbox="451 541 967 730" style="list-style-type: none"> • Forecast requirements. • Determine economic order quantities. • Initiate purchase requests. • Track receipt and delivery of supplies. • Distribute supplies. <p data-bbox="391 772 1105 852">p. Describe the role and responsibilities of property managers .</p> <p data-bbox="440 867 1122 961">Many property managers specialize in overseeing Federal property that has been furnished to or acquired by contractors. Typical acquisition-related duties:</p> <ul data-bbox="451 972 1122 1255" style="list-style-type: none"> • Assign Government property to contractors. • Monitor the property control systems of contractors. • Monitor the contractor's compliance with the property clauses of the contract. • Assess damage to Government property. • Recommend method for disposing of property at the end of the contract. <p data-bbox="391 1297 1101 1377">q. Describe the role and responsibilities of auditors and accountants.</p> <p data-bbox="440 1392 857 1423">Typical acquisition-related duties:</p> <ul data-bbox="451 1434 1122 1728" style="list-style-type: none"> • Audit cost and pricing data provided by an offeror. • Recommend positions on proposed elements of cost. • Evaluate offerors' financial responsibility. • Confirm the correctness of the contractor's invoices for payment. • Review accounting and cost estimating systems. • Review indirect cost rates for billing purposes. 	

4.2 KEY ACQUISITION PERSONNEL

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>r. Describe the role and responsibilities of lawyers.</p> <p>Typical acquisition-related duties:</p> <ul style="list-style-type: none"> • Review proposed contracts for legal sufficiency. • Advise CO on protests and disputes. • Interpret policies and regulatory requirements. <p>s. Describe the role and responsibilities of small business advocates.</p> <p>Typical acquisition-related duties:</p> <ul style="list-style-type: none"> • Recommend that a contract be set-aside for competition among small businesses. • Identify opportunities for placing contracts with 8(a) suppliers. • Identify "break-out opportunities." • Review an offeror's plan for placing subcontracts with small businesses. <p>t. Describe the role and responsibilities of competition advocates.</p> <p>Typical acquisition-related duties:</p> <ul style="list-style-type: none"> • Review procurement plans and analyze specifications to identify and discourage "barriers" to full and open competition. • Identify "break-out" opportunities. • Review justifications for other than full and open competition. <p>u. Identify other interested parties.</p> <p>(e.g., reliability and maintainability specialists, value engineering program specialists, and streamlining advocates).</p>	

LESSON 5

INTRODUCTION

TO THE FEDERAL

ACQUISITION PROCESS

Introduction to the Federal Acquisition Process

TOPIC: INTRODUCTION TO THE FEDERAL ACQUISITION PROCESS

Ref: Chapter 5

Objective: When you finish this lesson, your students must be able to:

- Identify phases and functions of the acquisition process.
- Identify the basic business issues related to each function.
- Identify the general criteria for assessing performance of those functions.

Time: 1:40 PM — 30 Minutes

Method: Lecture/Discussion.


LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
5-1 to 5-10	a. State the 3 phases of the acquisition process— <ul style="list-style-type: none"> • Presolicitation • Solicitation and Award • Post-Award Administration b. Show VG 5-1: Presolicitation Functions.	

PRESOLICITATION FUNCTIONS

1. Determination of Need
2. Initiating the Procurement
3. Analysis of Requirement
4. Sourcing

VG 5-1

	c. For each function in the slide, present the related business question or questions (see next page 5-2). DO NOT ANSWER THESE QUESTIONS AT THIS POINT OR DISCUSS THE FUNCTIONS IN ANY DETAIL — THIS WILL BE DONE IN LESSON 6.	
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Functions

Related Business Questions

Determination of Need

What does the Government need, and how can the Government best meet the need?

Initiating the Procurement

Is the purchase request acceptable as the basis for the procurement, and what are the steps in initiating the procurement?

What facts do you need about the requirement and the market to make good business decisions, and where do you get these facts?

Analysis of Requirement

How can the Government's requirements be stated so as to yield the best market response?


Sourcing

Who should you allow to compete for the procurement?

What factors should you apply in selecting a competing offeror for award?

Which method of procurement will best serve the Government's need?


What milestones will be tracked in soliciting and evaluating offers? Who will participate on the source selection team? What roles, responsibilities, and milestones will be assigned to each participant?

Ref.	Steps In Presenting The Topic	Instructor Notes
	d. Show VG 5-2: Solicitation-Award Functions.	

SOLICITATION-AWARD FUNCTIONS

1. Solicitation
2. Evaluation
3. Award

VG 5-2

	<p>e. For each function in the slide, present the related business question or questions on the next page.</p> <p>WARNING—DO NOT ANSWER THESE QUESTIONS AT THIS POINT OR DISCUSS THE FUNCTIONS—THIS WILL BE DONE IN LESSON 7.</p>	
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Functions

Related Business Questions

Solicitation

What terms and conditions should be incorporated in the solicitation?

How can you best communicate the Government's need to the market, and how should you respond to feedback from the market on the solicitation?

Evaluation— Sealed Bidding

Which, if any, of the submitted bids should be considered for award?

Evaluation— Negotiation

Which, if any, of the submitted proposals should be considered for award, and what needs to be discussed with the offerors?

What strategies and tactics will you employ in discussing proposals with offerors, and how can you obtain and evaluate Best and Final Offers?


Award

Is the offeror in line for award responsible, and is the offer free of any clerical or other mistakes?

How should the contract be executed and announced?

How can any protests of the award be resolved?

Has there been any evidence of fraud or other misconduct in awarding the contract?

Ref.	Steps In Presenting The Topic	Instructor Notes
	f. Show VG 5-3: Post-Award Functions.	

POST-AWARD ADMINISTRATION FUNCTIONS

1. Start-up
2. Quality Assurance
3. Payment and Accounting
4. Closeout
5. Contract Modification
6. Termination
7. Claims

VG 5-3



g. For each function in the slide, present the related business question or questions.

Do not answer the questions at this time—you will address them in lessons 8 & 9.

Functions

Related Business Questions

Start-Up

What are the critical post-award tasks and milestones, who should be responsible for each task and milestone, and should you provide an orientation to CORs and the contractor on their respective tasks and responsibilities under the contract?

When an indefinite-delivery contract has been established, how are goods and services ordered?

Should you consent to proposed subcontracts?

Quality Assurance

How can you detect problems with the contract, what remedies are available, and how should the problems be resolved?

If property has been furnished to the contractor, how can you ensure that it will be used properly and returned whole to the Government?

Should you report poor performance for potential suspension or debarment?

Payment and Accounting

What is owed to the contractor, and when and how should payment be made?

Has the Government been adversely impacted by flaws in the contractor's estimating and accounting of costs and if so, how can restitution be made?

Closeout

How do you closeout the contract?

Contract Modification

Should you modify the contract, and, if so, how?

Termination

Should you terminate the contract, and, if so, how?

Claims

How should you respond to the contractor's claim?

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>h. Show VG's 5-4 and 5-5, which correspond to Exhibit 5-4 in the Text/Reference. Direct the student's attention to Exhibit 5-4 on pages 5-8 and 5-9 of the Text/Reference—the flowchart of the Federal acquisition process.</p> <p>State that this chart presents the principal duties of Federal Contract Specialists, grouped by phase and function.</p> <p>Inform the students that chapters 6-9 covers each and every one of these duties in the order of this chart .</p> <p>Warn the students:</p> <ul style="list-style-type: none"> • Not every function or duty is performed for every contract. For example, few contracts are terminated. • The actual sequence in which duties are performed often vary from one procurement action to another. 	<p><i>Use these VG's only to make the point that during the next several days, the students will traverse the entire flowchart from column 1 through to the end.</i></p> <p><i>Spend no time on the contents of these VGs.</i></p>

LESSON 6

PRESOLICITATION PHASE

TOPIC: PRESOLICITATION PHASE

Ref: Chapter 6


Objective: When you finish this lesson, your students must be able to:

- List and describe duties related to determining the need.
- List and describe duties related to initiating the procurement.
- List and describe duties related to analyzing the requirement.
- List and describe duties related to sourcing the requirement.

Time: Break before. Resume at: 2:30 PM — 120 Minutes (2:30 PM - 3:30 PM Day 1 and 8:00 AM -9:00 AM Day 2)

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 6-1: Presolicitation Phase . b. Restate the related business questions (see below).	

Functions*

Related Business Questions

Determination of Need

6.1 What does the Government need, and how can the Government best meet the need?

Initiating the Procurement

6.2.1 Is the PR acceptable as the basis for the procurement, and what are the steps in initiating the procurement?

6.2.2 What facts do you need about the requirement and the market to make good business decisions, and where do you get these facts?

Analysis of Requirement

6.3 How can the Government's requirements be stated so as to yield the best market response?

Sourcing

6.4.1 Who should you allow to compete for the procurement?


6.4.2 What factors should you apply in selecting a competing offeror for award?

6.4.3 Which method of procurement will best serve the Government's need?

6.4.4 What milestones will be tracked in soliciting and evaluating offers? Who will participate on the source selection team? What roles, responsibilities, and milestones will be assigned to each participant?

*(From VG 6-1)

6.1 DETERMINATION OF NEED

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 6-2 : Determination of Need.	

Determination of Need	Initiating the Procurement	Analysis of Requirement	Sourcing
Determination of Need Forecasting Requirements Acquisition Planning			



VG 6-2

6-3	b. Present the Setting: “A PM is preparing his plans and budget for the upcoming fiscal year.” c. Present the first Basic Business Question: “What does the Government need, and how can the Government best meet the need?” d. To answer this question, managers: <ol style="list-style-type: none"> Forecast requirements. Plan the acquisition. 	
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6.1.1 FORECASTING REQUIREMENTS

Ref.	Steps In Presenting The Topic	Instructor Notes
6-4	<p>a. Assert that program managers forecast requirements 5 or more years in advance.</p> <p>Why? To:</p> <ul style="list-style-type: none"> • Prepare program plans, schedules, and budgets • Comply with the acquisition planning requirements of Part 7 of the FAR <p>b. Describe the CO's potential role.</p> <ul style="list-style-type: none"> • Help requiring activities draft realistic plans, schedules, and budgets • Recommend long-range strategies for meeting the goals of the acquisition process (e.g., quality, cost, timeliness, socioeconomic, risk, competition, & integrity) 	

6.1.2 ACQUISITION PLANNING

Ref.	Steps In Presenting The Topic	Instructor Notes
6-5 to 6-7	<p>a. Define acquisition planning.</p> <p>FAR 7.101: “the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.”</p> <p>Note that written acquisition plans are required under Part 7 of the FAR for acquisitions above agency thresholds for cost and complexity.</p>	
	<p>b. Question: “What are the reasons for acquisition planning?” [Solicit answers from the class before providing your own]</p> <p>Answers:</p> <ul style="list-style-type: none"> • Maximize competition • Integrate the efforts of all personnel responsible for the acquisition • Ensure that needs are met in a cost-effective and timely manner. 	
 Exhibit 6-4 on page 6-7.	<p>c. Show VG 6-3. The viewgraph lists the two principal elements of an acquisition plan. Provide a few examples of typical sub-elements (see next page).</p>	

Elements of a Typical Acquisition Plan


1. Acquisition Background and Objectives:
 - *Statements of need*
 - *Applicable conditions*
 - *Cost*
 - *Capability or performance characteristics*
 - *Delivery or performance-period requirements*
 - *Trade-offs (e.g., between cost, schedule, & performance)*
 - *Risks*
 - *Acquisition streamlining (e.g., simplifying the SOW)*
2. Plan of Action:

<ul style="list-style-type: none"> • <i>Sources</i> • <i>Competition</i> • <i>Source selection procedures</i> • <i>Contracting considerations</i> (e.g., contract type) • <i>Budgeting and funding</i> • <i>Product descriptions</i> • <i>Mgt. info. requirements</i> 	<ul style="list-style-type: none"> • <i>Test and evaluation</i> • <i>Logistics considerations</i> • <i>Gov't-furnished property</i> • <i>Gov't-furnished info.</i> • <i>Environmental considerations</i> • <i>Milestones</i> • <i>Participants in acquisition plan preparation</i> • <i>Other considerations</i>
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VG 6-3

d. Tell the class that most acquisition plans will not have every element of Exhibit 6-4.

6.2.1 PROCESSING THE PURCHASE REQUEST

Ref.	Steps In Presenting The Topic	Instructor Notes
 6-10	a. Show VG 6-4: Initiating the Procurement.	



Determination of Need	Initiating the Procurement	Analysis of Requirement	Sourcing
	Processing the PR Purchase Requests Funding Market Research Market Research		

VG 6-4

b. Present the Setting: “The PM has forecast requirements and prepared a plan, with appropriate help from the CO, for acquiring any major requirements. Now the PM is ready to initiate the acquisition of one of the requirements. For that purpose, the PM has prepared a Purchase Request and submitted the PR to the CO for action.” c. Present the Basic Business Question: “Is the PR acceptable as the basis for the procurement, and what are the steps in initiating the procurement?” d. List the steps: <ol style="list-style-type: none"> 1. Determine whether or not to accept the Purchase Request. 2. Verify funding. 	
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TOPIC: 6.2.1.1 PURCHASE REQUESTS

Ref. Pages 6-10 to 6-11

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define "Purchase Request." List some of the more typical elements.</p> <ul style="list-style-type: none"> • Required approvals. • Fund cite (or justification for proceeding without such). • Quantity and the related Government cost estimate. • Description of the requirement. <p>b. State the CO's role and purpose in determining the acceptability of the PR. Inform the class that, if the PR is not acceptable for some reasons, the CO will contact the initiator and try to resolve the problem.</p>	
	<p>c. Question: "Does acceptance mean that the PR will not require any further revision?" [Solicit answers from the class before providing your own]</p> <p>Answer: No. Rather, it means that the PR has all necessary elements for proceeding with the acquisition. As the CO works further on the solicitation, questions may arise about the specifications, delivery dates, recommended sources and terms, and the like.</p>	
	<p>d. Question: "Once a CO has accepted a PR for action, the PALT clock starts ticking. What is PALT and what does PALT mean to the CO?" [Solicit answers from the class before providing your own]</p> <p>Answer: PALT means Procurement Administrative Lead Time. This means the time from acceptance of the PR to award. Contracting officers are often judged against PALTs.</p>	





e. **Question:** “Having accepted the PR, what does the CO do next?” [Solicit answers from the class before providing your own]

Answer: Among other things, the CO might:

1. Establish the contract file.
2. Brief the requirements manager on his or her roles and responsibilities, including requirements to protect information on the upcoming acquisition.
3. Assign the PR to a subordinate.
4. Enter the PR number and date of receipt in a tracking system.

6.2.1.2 FUNDING

Ref.	Steps In Presenting The Topic	Instructor Notes
6-12 to 6-13	<p>a. Describe the process by which funds are committed to a PR.</p> <p>Answer: The requirements manager is responsible for committing funds for obligation. To commit funds, appropriation data are entered on the PR. Normally, the finance office then certifies that funds are available for obligation on the PR.</p>	
	<p>b. Question: CO's generally will not accept a PR prior to the commitment of funds for obligation. Why?</p> <p>Answer: COs may be personally responsible for payment (under the provisions of the Anti-Deficiency Act), if a contract is awarded and there are insufficient funds.</p>	
	<p>c. Explain that the CO may revisit the funding as an issue after accepting the PR, to ensure that the right kind and amount of funds are available for the solicitation and, later, for contract award.</p>	
	<p>d. Question: Can COs contract for requirements that are not firm or not fully funded at the time of award? [Solicit answers from the class before providing your own]</p> <p>Answer: Yes, by:</p> <ul style="list-style-type: none"> • Making the solicitation subject to the availability of funds. • Including an option. • Using indefinite delivery terms and conditions (to be discussed as part of Lesson 7). • Incorporating clauses that provided for multiyear contracting. 	


6.2.2 MARKET RESEARCH

Ref.	Steps In Presenting The Topic	Instructor Notes
6-13 to 6-15	<p>a. Present the Setting: The CO has accepted the PR.</p> <p>b. Present the Basic Business Question: “What facts do you need about the requirement and the market to make good business decisions, and where do you get these facts?”</p> <p>c. Define market research: “the process used for collecting and analyzing information about the entire market available to satisfy minimum agency needs.” The results of market research are used “to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.” FAR 10.001</p> <p>d. Stress that the FAR requires COs to conduct market research. Purposes:</p> <ul style="list-style-type: none"> • Promote competition (FAR 10.002(a)(2)). • Identify commercial products that can meet the need (FAR 11.004(a)). • Meet the Government's needs in a cost effective manner (FAR 11.004(b)). 	


6.2.2 MARKET RESEARCH

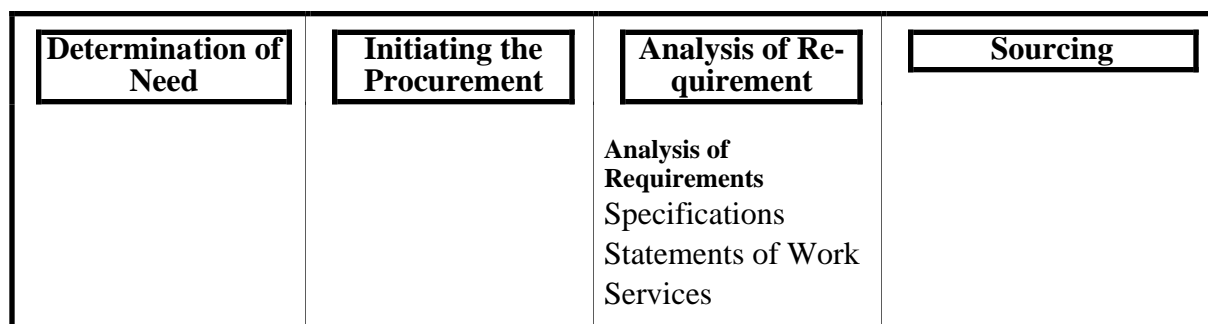
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. As an example, identify potential questions that a CO might ask about the market for air cleaning equipment, if given a PR for such equipment.</p> <p>Potential questions about the market:</p> <ul style="list-style-type: none"> • Is acceptable equipment available in the market? • Is the industry experiencing any backlogs? What are current delivery lead times? • What prices are currently being paid? What are the trends in supply and demand? • What are the key determinants of price for this equipment? • What terms and conditions typically apply to buying pollution-control equipment—e.g., warranties, contract types, etc.? • What do we know about the expected life, reliability, and maintainability of commercially available equipment? • Has the Government acquired such equipment before? If so, at what price? What were the lead times? Were there any problems with the acquisition and subsequent performance by the contractor? • Are there qualified contractors to install? • Can time requirements be met? • How do commercial specs match up with the PR? 	

6.2.2 MARKET RESEARCH

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="245 352 943 468">f. Question: “Who has the answers to these questions on the market for air cleaning equipment?”</p> <p data-bbox="293 489 802 520">Solicit and write answers on a flipchart.</p> <p data-bbox="293 537 545 569">Potential answers:</p> <ul data-bbox="310 579 987 1108" style="list-style-type: none"> • The requiring activity and other in-house technical experts. • Acquisition histories available in your contracting activity (e.g., the contract for the original equipment). • COs in other contracting activities and agencies. • Industry buyers of the pollution control equipment. • Independent Governmental or private sector testing associations. • Environmental associations and publications. • Potential suppliers (available from their catalogs, marketing literature, sources sought synopses, and surveys). • Trade and professional associations. 	

6.3.1 ANALYSIS OF REQUIREMENTS

Ref.	Steps In Presenting The Topic	Instructor Notes
 6-16	a. Show VG 6-5: Analysis of Requirement.	





VG 6-5

<p>b. Present the Setting:</p> <p style="padding-left: 40px;">“You have amassed facts about the requirement and the market. You are ready to begin applying your market knowledge.”</p> <p>c. Present the Question:</p> <p style="padding-left: 40px;">“How can the Government's requirements be stated so as to yield the best market response?”</p> <p>d. List the Steps:</p> <ol style="list-style-type: none"> 1. Review Specifications. 2. Review the overall Statement of Work and related aspects of the requirement. 3. Determine whether requisitioned services (if any) may properly be acquired and under what conditions. 	
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6.3.1.1 SPECIFICATIONS

Ref.	Steps In Presenting The Topic	Instructor Notes
6-17 to 6-19	<p>a. Define Specification:</p> <p>“a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. Specifications shall state only the Government's actual minimum needs and be designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired.” FAR 10.001</p> <p>b. Present the three types of specifications.</p> <p>I. Functional</p> <ul style="list-style-type: none"> • Describes the deliverable in terms of general performance goals and intended use. • The contractor accepts general responsibility for achievement of the performance goals. • Does not specify any particular approach or type of product • Is the least restrictive type of specification <p>Example: A requirement for a system to purify water which leaves the door open to (1) chemicals, (2) filters, (3) distillation, (4) genetically engineered bacteria, and (5) any and all combinations of these approaches—as long as the proposed approach satisfies the Government's goals for purity, gallons per hour, and system life.</p> <p>II. Performance</p> <ul style="list-style-type: none"> • Describes the deliverable in terms of desired operational characteristics. • The contractor accepts general responsibility for achievement of the performance requirements. • More restrictive than functional, in terms of limiting alternatives and defining separate performance standards for each such alternative. <p>Example: A requirement for a water filter which is cast in terms of operational characteristics (e.g., measures and levels of purity, gallons per hour, filter life, electrical rating, maximum voltage requirements, etc.).</p>	

6.3.1.1 SPECIFICATIONS


Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>III. Design:</p> <ul style="list-style-type: none"> Establishes precise measurements, tolerances, materials, in process and finished product tests, quality control, inspection requirements, and other such specifics . The Government assumes liability for the design and related omissions, errors, and deficiencies in the specifications and drawings. For that reason—the least desirable type of specification. <p>Example: A requirement for a water filter built to Government furnished blueprints and material requirements.</p> <p> c. Point out that specifications for a complex procurement are often a composite.</p> <p> d. Show VG 6-6. This is an interactive view-graph that lists examples of different types of specifications. Ask the students to tell you whether the specification is a functional, performance or design specification. Use a marker to mark an "X" in the appropriate box. The answers are provided on the next page.</p>	

6.3.1.1 SPECIFICATIONS (CON'T)


SPECIFICATIONS

1. Bathroom must include bathtub and separate shower (see blueprints) [DESIGN]
2. Provide gasoline powered generator capable of providing ____ watts at ____ amps of electricity for 24 hours on a single 30 gallon tank of fuel. [PERFORMANCE]
3. Provide a communication system between construction site and program office [FUNCTIONAL]
4. 200 doz. cookies must be IAW Fed Spec XYZ [DESIGN]
5. Develop a system for protecting the nose cone during reentry [FUNCTIONAL]
6. Provide 300 tons of steel capable of resisting high temperature to 200° F without break-down [PERFORMANCE]
7. "Janitorial Work" includes dusting, vacuuming, and emptying the trash
☞ [PERFORMANCE OR FUNCTIONAL]

VG 6-6

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. Question: When reviewing a performance specification, what should you watch out for?</p> <p>Potential answers:</p> <ul style="list-style-type: none"> • Any words that would disqualify products or services that can satisfy the Government's actual minimum need.. • Any imprecision or ambiguity in language that describes the desired performance characteristics. • Any goldplating—performance characteristics over and above what is necessary to meet the actual minimum need. • Nonessential or obsolete requirements. • Words that would allow products to be considered "acceptable" by inspectors even if they would not satisfy the actual minimum need. 	

6.3.1.2 STATEMENT OF WORK

Ref.	Steps In Presenting The Topic	Instructor Notes
6-20 to 6-21	<p>a. Define Statement of Work:</p> <p>Describes the work to be performed and incorporates any applicable specifications.</p>	
	<p>b. Show VG 6-7. This is an interactive view-graph that lists several items that may or may not be included in a SOW. Ask students to point out which of those items will be included in the SOW.</p> <p>The correct answers are indicated by an "*". (With respect to the Uniform Contract Format, these items appear in Part 1, Section C).</p> <p>Requiring managers often furnish information on items 1, 4, and 7 with the PR. They may regard items 1, 4, and 7 as part of their SOW. However, COs incorporate these items in sections of the solicitation other than that reserved for the SOW (i.e., Section C of the Uniform Contract Format). Packing requirements go to Section D; delivery requirements to Section F, and Inspection criteria to Section E of the UCF.</p>	

STATEMENT OF WORK

1. Packing, packaging, and marking requirements
2. Names of contracting officials
3. Contract clauses and solicitation provisions
4. Delivery schedules or period of performance
5. **General scope of work/objectives** "*"
6. **Reporting requirements** "*"
7. Inspection and acceptance criteria
8. **Contractor tasks** "*"
9. Small disadvantaged business requirements
10. **Specifications for each deliverable** "*"

VG 6-7


6.3.1.3 SERVICES

Ref.	Steps In Presenting The Topic	Instructor Notes
6-22 to 6-24	<p>a. Define Service Contracts.</p> <p>Contracts awarded for the performance of an identifiable task, rather than for furnishing an end item of supply.</p> <p>b. Stress that there are statutory and regulatory controls on the acquisition of 2 types of services:</p> <p>1. Acquisition of personal services</p> <p>Explain that a personal service is one in which the contractor personnel appear to be, or are treated as, Government personnel. Personal service contracts are generally not allowed.</p> <p>2. Acquisition of advisory and assistance services</p> <p>Examples of such services:</p> <ul style="list-style-type: none"> • Individual experts and consultants. • Studies, analyses, and evaluations. • Management and professional support services. • Engineering and technical services. <p>c. Stress that Part 37 of the FAR establishes tight controls on the acquisition of advisory and assistance services.</p> <p>For example, §37.202(c) states that such advisory and assistance services shall not be—</p> <ol style="list-style-type: none"> (1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials; (2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures; (3) Contracted for on a preferential basis to former Government employees; (4) Used under any circumstances specifically to aid in influencing or enacting legislation; (5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency. 	

6.3.1.3 SERVICES

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Tell the class: Even when you have authority to acquire the requested service, you may have other hurdles to jump before you can acquire the service. For instance, the Service Contract Act , where applicable, requires COs to request “Wage determinations” from the Dept. of Labor prior to soliciting offers.</p> <p>e. Define “Wage Determination” and state the purpose of such determinations.</p> <p>Wage determinations identify the minimum monetary wages and fringe benefits that contractors must pay to “service employees” for performing work under a Federal contract. CO's attach the Wage Determination to the solicitation. This puts would-be offerors on notice that their prices should reflect the wage rates—since those wage rates will be enforced by the Government if the offeror is awarded the contract.</p> <p>Also note that the Act exempts some types of employees, such as “professional employees” from the Wage Determinations.</p>	

6.4.1 EXTENT OF COMPETITION

Ref.	Steps In Presenting The Topic	Instructor Notes
 6-25 and 6-26	a. Show VG 6-8: Sourcing. Focus on the first function—"Extent of Competition"	


Determination of Need	Initiating the Procurement	Analysis of Requirement	Sourcing Extent of Competition Required Sources Set-Asides 8(a) Procurements Competition Requirements Unsolicited Proposals Selection Factors Lease vs. Purchase Price Related Factors Technical Evaluation Factors Procurement Method Method of Procurement Procurement Planning Procurement Plans

VG 6-8

6.4.1 EXTENT OF COMPETITION

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 352 727 394">b. Present the Setting:</p> <p data-bbox="440 411 1105 604">“The specification, Statement of Work, and related aspects of performance are complete. If the acquisition is for services, the CO has obtained any required justifications and determinations have been obtained.”</p> <p data-bbox="391 648 753 690">c. Present the Question:</p> <p data-bbox="440 707 1073 783">“Who should you allow to compete for the procurement?”</p> <p data-bbox="391 827 1040 903">d. List Factors in determining the extent of competition:</p> <ol data-bbox="412 911 1127 1337" style="list-style-type: none"> <li data-bbox="412 911 1078 987">1. Requirements in law or regulation to use specific suppliers. <li data-bbox="412 995 1122 1071">2. Requirements to set aside procurements for small business. <li data-bbox="412 1079 1127 1155">3. Availability of suppliers under the 8(a) program. <li data-bbox="412 1163 938 1239">4. Requirements for full and open competition. <li data-bbox="412 1247 959 1337">5. The validity and suitability of an unsolicited proposal. 	

6.4.1.1 REQUIRED SOURCES

Ref.	Steps In Presenting The Topic	Instructor Notes
 6-26 to 6-28	<p>a. Define “required source” and provide examples of such sources. Note that most of the required sources provide commercially available, “common-use” products and services.</p> <ul style="list-style-type: none"> √ Agency Inventories. √ Excess Personal Property — FAR §8.1 √ Federal Prison Industries, Inc. — FAR §8.6 √ Products from the Blind & Other Severely Handicapped — FAR §8.7. √ GSA, DLA, and VA stocks. √ Federal Supply Schedules — FAR §8.4. <p>b. Ask the students to open their books to pages 6-27 and 6-28 and scan Exhibits 6-14 and 6-15.</p> <p>c. Define “priority order” .</p> <p>d. Note that a separate ordering procedure is prescribed for each source in FAR Part 8.</p> <p>e. State that special acquisition policies apply to requirements for the following deliverables:</p> <ul style="list-style-type: none"> √ Jewel bearings— FAR §8.2. √ Utilities — FAR §8.3 √ Printing — FAR §8.8 √ ADP — FAR §39 and the FIRMR. √ Leased motor vehicles — FAR §8.11 √ Strategic materials — 41 CFR 101-14.2 √ Helium — 30 CFR Parts 601 and 602 	

6.4.1.1 REQUIRED SOURCES

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 363 1089 443">f. State that CO's may turn to the open market only if a required source cannot meet the need.</p> <p data-bbox="436 457 1094 583">FAR provisions for each required source differ in both procedure and substance when it comes to determining whether the source can or cannot meet the need.</p> <p data-bbox="436 598 911 636">Some typical factors (among others):</p> <ul data-bbox="451 640 1101 888" style="list-style-type: none"> • Features of the product (can the product of a required source in fact meet the need)? • Urgency • Quantities required, if, for instance, the quantity you need exceeds the maximum ordering limitation of the source. • Price. <p data-bbox="391 945 1101 1062">g. Stress that, if a required source cannot meet the need, the CO builds or maintains a “mailing list” of potential offerors.</p>	

6.4.1.2 SET-ASIDES

Ref.	Steps In Presenting The Topic	Instructor Notes
6-29 to 6-32	<p>a. Define “Set-Aside.”</p> <p>An acquisition reserved in part or in whole for small businesses and/or businesses in labor surplus areas.</p> <p>b. State that there are several different types of set-asides. To identify the set-aside, if any, that best matches your requirement, the CO has to take into account the mandated “pecking order.”</p> <p>c. Show VG 6-9.</p>	



SET-ASIDE PRIORITIES

1. Total set-aside for small businesses located in labor surplus areas
2. Total set-aside for small businesses
3. Partial set-aside for small businesses located in labor surplus areas
4. Partial set-aside for small businesses
5. Total labor surplus area set-aside for all concerns located in labor surplus areas

VG 6-9

d. Present the decision-rule for determining which set-aside applies, if any.


A reasonable expectation that:

- Offers will be obtained from at least two responsible sources, and that
- Awards will be at fair market prices

6.4.1.3 8(a) PROCUREMENTS

Ref.	Steps In Presenting The Topic	Instructor Notes
6-32	<p>a. Describe the 8(a) program.</p> <p>Explain that §8(a) of the SBA act authorizes SBA to serve as a prime contractor in meeting the requirements of Federal agencies. SBA in turn sub-contracts with small businesses that are at least 51% owned by one or more persons who are both socially and economically disadvantaged. The program is intended to provide such firms an opportunity to develop into experienced, strong competitors for future contracts after they "graduate" from the 8(a) program.</p> <p>b. To take best advantage of the 8(a) program—</p> <ul style="list-style-type: none"> • Research 8(a) firms that have the potential of meeting your organization's needs. • Identify the best such 8(a) firms. • Be proactive in seeking out and utilizing those firms. 	

6.4.1.4 COMPETITION REQUIREMENTS& 6.4.1.5 UNSOLICITED SOURCES

Ref.	Steps In Presenting The Topic	Instructor Notes
6-33 to 6-35	<p>a. Define “Full and Open Competition”.</p> <p>All responsible sources are permitted to compete.</p> <p>b. List exceptions to the requirement for FAOC—</p> <ul style="list-style-type: none"> • Small purchases. • 8(a) acquisitions—although there are requirements for competition <u>between</u> 8(a) firms for some acquisitions. • Seven statutory exceptions. 	
	<p>c. Show VG 6-10: This is an interactive view-graph that lists several phrases that either allow for other than FAOC or do not allow for other than FAOC. Have students identify which statutory authority would allow for other than FAOC.</p> <p>The correct answers are indicated by an "*".</p>	

OTHER THAN FAOC

1. Public interest "*"
2. Unusual and compelling urgency "*"
3. Only one responsible source and no other supplies/services will satisfy agency requirements "*"
4. Only one bid submitted
5. National security "*"
6. Price reasonableness cannot be determined



VG 6-10

6.4.1.4 COMPETITION REQUIREMENTS&

6.4.1.5 UNSOLICITED SOURCES

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Refer students to Exhibit 6-18. Read aloud the first exception—“Only one responsible source and no other supplies or services will satisfy agency requirements” Draw their attention to the last example for this exception:</p> <p>“The contract is in response to an unsolicited research proposal.”</p> <p>e. Define unsolicited proposal:</p> <p>A written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request.</p> <p>f. Warn students that, if presented with an alleged “unsolicited proposal,” do not assume that you can make a noncompetitive award.</p> <p>For instance, FAR §15.507 forbids a noncompetitive award if the unsolicited deliverable:</p> <ul style="list-style-type: none"> • Closely resembles a requirement for a pending competitive acquisition. • Is not innovative and unique. • Is available without restriction from another source. <p>g. Describe FAOC after the Exclusion of Sources.</p> <p>Even when FAOC is required, the FAR occasionally permits COs to exclude some sources from competing. The most common example: set-asides.</p>	


6.4.2 SELECTION FACTORS

Ref.	Steps In Presenting The Topic	Instructor Notes
 6-36 to 6-40	<p>a. Present the Setting:</p> <p>“Our acquisition will be made on the basis of full and open competition.”</p> <p>b. Present the Question:</p> <p>“What factors should you apply in selecting a competing offeror for award?”</p> <p>c. List potential evaluation factors:</p> <ol style="list-style-type: none"> 1. Lease vs. Purchase. 2. Price-Related. 3. Technical. 	
	<p>d. Stress that all evaluation factors must be stated in the solicitation—section M of the Uniform Contract Format.</p> <p>e. State that, when acquiring equipment, the first issue is whether to lease or buy it?</p> <ul style="list-style-type: none"> • Sometimes, the only real choice is to buy (e.g., pencils). • Sometimes, the only real choice is to lease (e.g., when you need a crane for a day). • At other times, the choice is a toss-up (e.g., as it is these days between buying a car vs. leasing one). In that case, you can let the market decide the question. That is, you can ask each vendor to submit either an offer to sell, or an offers to lease, or both. You then can pick the offer that entails the lowest total cost over the useful life of the equipment. 	

6.4.2 SELECTION FACTORS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Issue two: The evaluation factors to use as the basis for selecting an offeror.</p> <p>g. Define price-related factors and state their purpose:</p> <p style="padding-left: 40px;">Price-related factors are used to adjust the "sticker price" of an offer to reflect additional costs of acquiring and owning the offered deliverable. By using price-related factors, COs can identify and select that offer which would result in the lowest total cost to the Government over the deliverable's useful life.</p> <p>h. Present examples of price-related factors:</p> <p style="padding-left: 40px;">Energy efficiency—the Government may take into account the fact that Brand A's electric bill would run \$500 more a year than Brand B's. In that case, the Government may buy Brand B even if Brand A's sticker price is \$200 less.</p> <p style="padding-left: 40px;">For other commonly used price-related factors, refer the students to Exhibit 6-19 on page 6-38 of the text reference.</p> <p>i. Define technical factors and state their purpose:</p> <p style="padding-left: 40px;">Any evaluation factors that are not price-related.</p> <p style="padding-left: 40px;">Technical factors are used to minimize the business and technical risks inherent in a contract. At times, such risks outweigh price as a factor in making award.</p> <p style="padding-left: 40px;">Technical factors give an edge to those offerors which have the best potential for successfully completing the work.</p> <p>j. Present the two basic issues in reviewing proposed technical factors:</p> <ul style="list-style-type: none"> • Are the factors reliable (i.e., would comparable evaluators apply them consistently?) • Are the factors valid (i.e., would a firm ranking highest on the factors in fact have the highest probability of successfully performing the work?) 	

6.4.2 SELECTION FACTORS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>k. Present examples of technical factors:</p> <p>Which brain surgeon would you rather hire—the surgeon who offers a cut rate price or the surgeon whose patients have had the highest survival rate? In this example, patient survival rates represent a technical evaluation factor.</p> <p>See Exhibit 6-20 on page 6-39 for examples of technical evaluation factors.</p> <p>l. Present two ways of applying technical factors:</p> <ul style="list-style-type: none"> • On a “go/no-go (i.e., pass/fail) basis.” • To rank proposals. <p>m. Distinguish acquisitions based on “lowest price” from acquisitions based on “greatest value.”</p> <ul style="list-style-type: none"> • When technical factors are used only on a “go/no-go basis” to identify technically acceptable offers, then award is based on “lowest price.” • When technical factors are used to rank proposals, then award is based on “greatest value” — in which case, the selection official—consistent with the solicitation's evaluation factors and method of award provisions—weighs the technical merits of each proposal against its price. When merited by its technical superiority, selection officials can select an offer for award even if its price is higher than that of other offers in the competitive range. 	
	 <p>n. Show VG 6-11 Evaluation Factors</p>	


EVALUATION FACTORS

	Price Related	Technical
1. Expected Life		
2. Technical approach		
3. Installation Capability		
4. Operating costs		
5. Scheduling of work		
6. Experience		
7. Qualifications of Key Personnel		
8. Mean time between failures		
9. Maintenance and Repair		


10. Buy American Act	
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VG 6-11

6.4.2 SELECTION FACTORS

Ref.	Steps In Presenting The Topic	Instructor Notes
	o. Question: Suppose we plan to acquire a new, custom-made electrical water pump for the Hoover dam, using a "state-of-the-art" performance spec. This Viewgraph shows some potential evaluation factors for the acquisition. Which are price-related? Which are technical?	

EVALUATION FACTORS

	Price Related	Technical
1. Expected Life	X	
<u>Instructor notes:</u> What if FIRM A's pump generally lasts 5 years, but FIRM B's pump on average lasts 10 years before needing to be replaced. If FIRM A's sticker price is the same as FIRM B's, whose equipment would you buy? Should "life expectancy" influence our view of the two company's sticker prices?		
		
2. Technical approach		X
<u>Instructor notes:</u> Can FIRM A demonstrate that its technical approach to pumping water has a higher probability of delivering the required performance than the approaches of its rivals? Should this be a factor in making the selection?		
3. Installation capability		X
<u>Instructor notes:</u> If would-be offerors differ in their ability to install the pump, should this be a factor in making the selection?		
4. Operating costs	X	
<u>Instructor notes:</u> Suppose the monthly electrical bill for operating FIRM A's pump would be \$5,000, but the monthly bill for FIRM B's pump would be \$35,000. If FIRM A's sticker price is the same as FIRM B's, whose pump would you buy? Should "operating costs" influence our view of the two company's sticker prices?		
5. Scheduling of work		X
<u>Instructor notes:</u> Should we give some degree of preference to a company that can schedule installation of the pump earlier rather than later in the year? This can be very important if the pump is a critical path item on a larger construction project.		

6. Experience		X
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Instructor notes: Some firms have more experience in building high capacity pumps. Are the most experienced firms more likely to provide equipment that in fact meets the performance spec?

7. Qualifications of Key Personnel		X
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Instructor notes: If FIRM A can demonstrate that the employees it will assign to designing the pump are considerably more qualified than those of its rivals, should personnel qualifications be a factor in making the selection?

8. Mean time between failures		X
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Instructor notes: Every time the pump breaks down, engineers will have to shut down the hydroelectric generators. Should “meantime between failures” be a factor in making the selection for award?

9. Maintenance and Repair	X		
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Instructor notes: Should the expected costs for maintaining and repairing the pump be a factor in evaluating proposed prices?

10. Buy American Act	X		
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Instructor notes: We are contracting for supplies to be used within the U.S. Given that decision, the FAR requires the CO, to insert the provision at 52.225-1, Buy American Certificate, and the related clause at 52.225-3, Buy American Act—Supplies, in the solicitation. This provision and clause function as a trip wire, raising a flag if any company tries to sell us an imported pump. If FIRM A indicates on the Buy American Certificate that its pump is manufactured in Paraguay, then firms that offer Made-In-America pumps will be entitled to a 6% edge in price (if the firm is a large business outside a labor surplus area) or a 12% edge in price (if the firm is a small business or labor surplus area concern.)

On the other hand, these Buy American Act restrictions would not apply to an acquisition of an “end product” of the magnitude of this scenario from countries or instrumentalities designated under the “Trade Agreements Act ” of 1979.

6.4.3 METHOD OF PROCUREMENT

Ref.	Steps In Presenting The Topic	Instructor Notes
6-40 to 6-44	<p>a. Present the Setting:</p> <p>“Selection for award will be competitive. The CO has identified the factors that will be applied in making the selection.”</p> <p>b. Present the Question:</p> <p>“Which method of procurement will best serve the Government's need?”</p> <p>c. Present the Choices:</p> <ul style="list-style-type: none"> • Small Purchase • Sealed bidding • Negotiations • Two-step sealed bidding <p>d. Define “Small Purchase” .</p> <p>Acquisition of supplies, nonpersonal services, and construction in the amount of \$25,000 or less through the “simplified procedures” (e.g., imprest funds, purchase orders, and blanket purchase agreements) prescribed in Part 13 of the FAR.</p> <p>e. Define Sealed Bidding and present the basic steps in Sealed Bidding:</p> <ul style="list-style-type: none"> • Publicize the proposed action. • Issue an Invitation for Bids. • Receive sealed bids from bidders. • Publicly open the sealed bids. • Award to the low, responsive, responsible bidder—Explain that the low bid price is the "evaluated" low price; that is, price-related factors have been applied. 	

6.4.3 METHOD OF PROCUREMENT


Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Define competitive negotiations and present the basic steps in competitive negotiations.</p> <ul style="list-style-type: none"> • Publicize the proposed action. • Issue a Request for Proposals. • Evaluate proposals (technical and price). • Establish a "competitive range" that consists of proposals that have a reasonable chance of being selected for award. • Hold discussions with offerors in the competitive range. • Request best and final offers from the offerors in the competitive range. • Award a contract based on price and the other evaluation factors stated in the RFP. <p>g. Define Two-Step Sealed Bidding :</p> <p>Step 1: Solicit and discuss technical proposals.</p> <p>Step 2: Solicit sealed bids from offerors whose final technical proposals are acceptable.</p>	
	h. Show and discuss VG 6-12 —Conditions for the Use of Sealed Bidding.	

CONDITIONS FOR THE USE OF SEALED BIDDING



- Expectation of receiving more than one sealed bid
- Sufficient time to prepare an IFB, receive and evaluate bids, and make award
- Competition solely on price and price-related factors—no technical ranking factors
- No discussions necessary

VG 6-12

6.4.4 PROCUREMENT PLANNING

Ref.	Steps In Presenting The Topic	Instructor Notes
6-44 to 6-47	<p>a. Present the Setting:</p> <p>“The CO has made a number of critical decisions—the specifications to be used, extent of competition, evaluation factors for selecting an offeror, and method of procurement.”</p> <p>b. Present the Question:</p> <p>“What milestones will be tracked in soliciting and evaluating offers? Who will participate on the source selection team? What roles, responsibilities, and milestones will be assigned to each participant?”</p>	
	<p>c. Question: “What items do you think should be included in a procurement plan?” [Solicit answers from the class before providing your own]</p> <p>Potential Answers:</p> <ul style="list-style-type: none"> • The PR and documentation of discussions with the requiring activity regarding the PR. • Decisions on extent of competition. • Selection factors. • Method of procurement. • Milestones for awarding the contract. • Responsibilities. • Clearances, concurrences, and approvals. • Preliminary decisions on terms and conditions for the contract (which we will pick up in Lesson 7). • Preliminary decisions on contract administration tasks, milestones, and responsibilities (which we will pick up in Lesson 8). <p>d. Explain that Federal agencies often develop “formal source selection” plans for large, expensive, negotiated acquisitions.</p>	

6.4.4 PROCUREMENT PLANNING

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. Question: “What's different about a procurement plan when a decision has been made to use formal source selection procedures?” [Solicit answers from the class before providing your own]</p> <p>Answer: Usually in a formal source selection—</p> <ol style="list-style-type: none"> 1. There is a designated Source Selection Authority—generally not the CO. 2. A Source Selection Board (or like organization) is established. The Board is responsible for evaluating proposals and reporting findings and recommendations to the Source Selection Authority. <p>f. Stress that, regardless of whether the procurement plan is formal or informal, written or not, a key issue is one of milestones.</p>	
	<p>g. Show VG 6-13 and 6-13a: Milestones. Listed on this viewgraph are potential milestones.</p> <p>h. Ask the students to:</p> <ol style="list-style-type: none"> 1. Identify the one milestone that would not apply to a competitive negotiation. 2. For each milestone, identify the responsible party (e.g., CO, contractor, tech rep, and any others). 	

POTENTIAL MILESTONES

Milestones tracked when soliciting and evaluating offers

1. Complete RFP
2. Forward CBD synopsis
3. Mail RFP
4. Submit by closing date
5. Open bids
6. Complete price analysis
7. Complete technical analysis
8. Rank offers on technical factors
9. Establish initial competitive range
10. Begin discussions
11. Conclude discussions
12. Due date for BAFOs
13. Rank BAFOs on technical factors
14. Identify the top ranked BAFO based on both technical factors and price
15. Recommend award to the SSA
16. Prepare contract
17. Execute contract.

6-13 and 6-13a

Note--the only milestone that definitely would not apply: 5

CO: Milestones 1-3, 6, 9-11, 14-17

Contractor: 4 & 12

Technical Representatives 7-8 & 13. Also may play a role in 10, 11, and 15.

Other: Often a separate official is responsible for opening bids (5). A cost/price analyst may lend a hand both in analyzing proposed prices (6) and even in the conduct of discussions with offeror representatives (6, 10, & 11). If a Source Selection Authority has been appointed, that official may also play a role in some of these decisions (e.g., 9).

RECAP OF LESSON 6

a. Show VG 6-14 and leave it in view during the recap.

Determination of Need	Initiating the Procurement	Analysis of Requirement	Sourcing
Determination of Need Forecasting Requirements Acquisition Planning	Processing the PR Purchase Requests Funding Market Research Market Research	Analysis of Requirements Specifications Statements of Work Services	Extent of Competition Required Sources Set-Asides 8(a) Procurements Competition Requirements Unsolicited Proposals Selection Factors Lease vs. Purchase Price Related Factors Technical Evaluation Factors Procurement Method Method of Procurement Procurement Planning Procurement Plans

VG 6-14

b. Recap the Business Questions that were addressed in Lesson 6.

LESSON 6 BASIC BUSINESS QUESTIONS

6.1 Determination of Need—What does the Government need, and how can the Government best meet the need?

6.2.1 Processing the Purchase Request—Is the PR acceptable as the basis for the procurement and what are the steps in initiating the procurement.

6.2.2 Market Research—What facts do you need about the requirement and the market to make good business decisions and where do you get these facts?

6.3 Analysis of Requirement—How can the Government's requirements be stated so as to yield the best market response?

6.4.1 Extent of Competition—Who should you allow to compete for the procurement?

6.4.2 Selection Factors—What factors should you apply in selecting a competing offeror for award?

6.4.3 Method of Procurement—Which method of procurement will best serve the Government's need?

6.4.4 Procurement Plans—What milestones will be tracked in soliciting and evaluating offers? Who will participate on the source selection team? What roles, responsibilities, and milestones will be assigned to each participant?

LESSON 7

SOLICITATION-AWARD PHASE

Solicitation-Award Phase

TOPIC: SOLICITATION-AWARD PHASE

Ref: Chapter 7


Objective: When you finish this introduction, your students must be able to:

- List and describe duties related to soliciting offers.
- List and describe duties related to evaluating bids and proposals.
- List and describe duties related to awarding the contract.

Time: 9:00 AM — 140 Minutes (Note: Break at 10:00 for 20 minutes; conclude the lesson at 11:40 AM)

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 7-1: Solicitation-Award Phase . b. Restate the related business questions (see below).	

Functions*

Related Business Questions

Solicitation

7.1.1 What terms and conditions should be incorporated in the solicitation?

7.1.2 How can you best communicate the Government's need to the market, and how should you respond to feedback from the market on the solicitation?

Evaluation— Sealed Bidding

7.2 Which, if any, of the submitted bids should be considered for award?

Evaluation— Negotiation

7.3.1 Which, if any, of the submitted proposals should be considered for award, and what needs to be discussed with the offerors?

7.3.2 What strategies and tactics will you employ in discussing proposals with offerors, and how can you obtain and evaluate Best and Final Offers?

Award

7.4.1 Is the offeror in line for award responsible, and is the offer free of any clerical or other mistakes?


7.4.2 How should the contract be executed and announced?

7.4.3 How can any protests of the award be resolved?

7.4.4 Has there been any evidence of fraud or other misconduct in awarding the contract?

*(From VG 7-1)

7.1 SOLICITATION

Ref.	Steps In Presenting The Topic	Instructor Notes
 7-2 and 7-3	a. Show VG 7-2: Solicitation.	

Solicitation	Evaluation— Sealed Bidding	Evaluation— Negotiation	Award
Terms and Conditions Contract Types Letter Contracts Contract Financing Use of Gov't Property & Supply Sources Bonds (Need for bonds) Solicitation Preparation Soliciting Offers Publicizing Proposed Procurements Prebid/Preproposal Conferences Amending Solicitations Cancelling Solicitations			

VG 7-2

- | | |
|--|--|
| <p>b. Present the Setting:</p> <p>“We have a Purchase Request and a procurement plan.”</p> <p>c. Present the Basic Business Question:</p> <p>“What terms and conditions should be incorporated in the solicitation?”</p> | |
|--|--|


7.1 SOLICITATION

Ref.	Steps In Presenting The Topic	Instructor Notes
Page 7-3	<p>d. List the Steps:</p> <ol style="list-style-type: none"> 1. Select terms and conditions for the solicitation. 2. Solicit offers. <p>e. Define “Solicitation”</p> <p>Solicitations consist of (a) a draft contract and (b) solicitation provisions. The draft contract includes a “Schedule” —which describes the requirement—and Contract Clauses.</p> <p>In sealed bidding, solicitations are called Invitations for Bids (IFBs). In negotiated acquisitions, solicitations are called Requests for Proposals (RFPs).</p> <p>f. Define “Contract Clause” and “Solicitation Provision.”</p> <p>Contract clauses state the rights and obligations of parties to the contract following award.</p> <p>Solicitation provisions tell offerors how to prepare and submit offers. Solicitation provisions also describe the evaluation of offers and the offeror's right to protest award. Provisions are not part of the resulting contract.</p> <p>g. State that, in this course, we will consider only a few of the many possible terms and conditions that might be considered for a solicitation, namely those relating to the:</p> <ul style="list-style-type: none"> • Type of contract • Providing Gov't financing for the work • Furnishing Government property for the work • Requiring the contractor to furnish a bond 	

7.1.1.1 CONTRACT TYPES
(ALSO 7.1.1.2—LETTER CONTRACTS)

Ref.	Steps In Presenting The Topic	Instructor Notes
7-4 to 7-9	<p>a. Define types of compensation arrangements:</p> <ul style="list-style-type: none"> • Fixed Price—the contract stipulates a fixed sum of money to be paid the contractor as consideration for performance. Stress that the contractor is obligated to deliver an acceptable product for the agreed-to price, no matter how much its costs the contractor. • Cost Reimbursement—the Government reimburses the contractor for the allowable costs of performance as or after they are incurred. Stress that the contractor is only obligated to make a “good faith” effort within the estimated cost—and may not continue performance once the money runs out. <p>b. Define types of ordering arrangements.</p> <ul style="list-style-type: none"> • Definite Quantity/Definite Delivery—the contract is for 100 widgets, 50 to be delivered by July 1 to the Oshkosh Federal Warehouse and 50 by August 1 to the Dayton Federal Warehouse. • Definite Quantity/Indefinite Delivery—the contract is for 100 widgets but does not schedule delivery. Instead, managers at the Oshkosh and Dayton Federal Warehouses will place delivery orders after award—each order specifying the number of widgets to ship and when they must arrive. • Indefinite Quantity—the contract is for a 100 widgets, but managers at the Oshkosh Federal Warehouse and the Dayton Federal Warehouse may order up to 500 additional widgets during the contract period at a price of \$50 per widget. • Requirements—the contract does not require the Government to purchase a single widget. Instead, managers at the Oshkosh Federal Warehouse and the Dayton Federal Warehouse have the right to order up to 1,000 widgets during the life of the contract at a price of \$50 per widget. 	

7.1.1.1 CONTRACT TYPES
(ALSO 7.1.1.2—LETTER CONTRACTS)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>c. Describe the steps in deciding the type of contract to solicit.</p> <p style="padding-left: 40px;">COs solicit Firm Fixed Price offers when the risks involved are minimal . Otherwise, the CO must (1) analyze risks inherent in the acquisition, (2) identify the type of contract that would best mitigate the risk or risks at issue, and (3) ascertain whether that contract type would be proper under the circumstances, given any limitations on its use.</p> <p>d. Have the students turn to page 7-6 and lead them through the first (Principal Risk to be Mitigated) and third (Elements) rows.</p> <p>e. Define “letter contract” and describe the purpose of such contracts.</p> <p style="padding-left: 40px;">Letter contracts are only appropriate for emergency acquisitions when there is no time for the ordinary course of solicitation and award.</p> <p> f. Tell the students that, “once you have decided on a type of contract to solicit, you must identify and incorporate the provisions and clauses entailed by that type of contract.”</p> <p>As an example, show VG 7-3: FAR 52.216-1.</p>	

VG 7-3 52.216-1 Type of Contract.

As prescribed in 16.105, complete and insert the following provision in requests for proposals (RFP’s) and requests for quotations (RFQ’s), unless the solicitation is for (a) a small purchase (see Part 13) or (b) information or planning purposes (see 15.405).

TYPE OF CONTRACT (APR 1984)


The Government contemplates award of a [Contracting Officer insert specific type of contract] contract resulting from this solicitation.

(End of provision)

7.1.1.3 FINANCING

Ref.	Steps In Presenting The Topic	Instructor Notes
7-10 to 7-11	<p>a. Define financing:</p> <p>“Payments made to a contractor before supplies have been delivered or services rendered. Contractors use the Government's money for such upfront expenses as:</p> <ul style="list-style-type: none"> • Materials and equipment. • Facilities. • Subcontracts.” <p>b. Explain why the Government occasionally finances contractors.</p> <p>Government financing may be necessary when private sources of funds, such as the company's equity or borrowed capital, would be inadequate or unaffordable. The longer the term of the contract, the more the contractor will be concerned about its ability to maintain the necessary cash flow during contract performance.</p> <p>c. Present types of financing.</p> <p>1. Customary Progress Payments: Payments made on the basis of costs incurred or on progress in completing the work. When based on costs incurred, contractors submit invoices at least monthly. The Government reimburses the contractor for 80% of the allowable costs on the invoice. For small businesses, the customary rate is 85%.</p> <p>Point out progress payments apply only to fixed price contracts. Remind the students that, under cost reimbursement contracts, contractors are also reimbursed periodically for allowable costs incurred in the previous period.</p> <p>2. Loan Guarantees: A guarantee to a lending institution that the Government will stand behind loans to the contractor.</p> <p>3. Unusual Progress Payments: Payments at a rate higher than 80% of costs incurred (or higher than 85% for small business concerns).</p> <p>4. Advance Payments: Payments made to the contractor in advance of any incurrence of cost. Advance payments are made rarely.</p>	

7.1.1.3 FINANCING

Ref.	Steps In Presenting The Topic	Instructor Notes
	d. Define “partial payments” as an alternative to financing the contractor.	
	<p>Partial Payments: Payments may be made for partial deliveries. For example, a contract for the delivery of 100 units per month, at a price of \$75.00 each, for a period of 12 months may provide for monthly payment -- provided that the 100 units delivered each month are accepted by the Government.</p>	
	e. Tell the students that, “once you have decided whether to make financing available and on the type of financing, you must identify and incorporate the related provisions and clauses .”	
	As an example, show VG 7-4: 52.232-13, Notice of Progress Payments.	


52.232-13 Notice of Progress Payments.

As prescribed in 32.502-3(a), insert the following provision in invitations for bids and requests for proposals that include a Progress Payments clause:

NOTICE OF PROGRESS PAYMENTS (APR 1984)

The need for customary progress payments conforming to the regulations in Subpart 32.5 of the Federal Acquisition Regulation (FAR) will not be considered as a handicap or adverse factor in the award of the contract. The Progress Payments clause included in this solicitation will be included in any resulting contract, modified or altered if necessary in accordance with subsection 52.232-16 and its Alternate I of the FAR. Even though the clause is included in the contract, the clause shall be inoperative during any time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

7.1.1.4 USE OF GOVERNMENT PROPERTY

Ref.	Steps In Presenting The Topic	Instructor Notes
7-11 to 7-12	<p>a. Describe types of Government furnished property:</p> <ul style="list-style-type: none"> • Facilities • Material • Motor Vehicles • Special Tooling • Special Test Equipment <p>b. Describe reasons for offering GFP to contractors.</p> <p>Generally, contractors are responsible for furnishing their own tools and supplies when manufacturing and installing equipment. Explain that GFP may be in the Government's interests when:</p> <ul style="list-style-type: none"> • The Government is the only source of supply for an item that is to be used in connection with contract performance (e.g., certain nuclear products), or • The cost of having the Government furnish property to a contractor is less than if the contractor furnished it. 	
	<p>c. Tell the students that, “if you decide to furnish Government property, you must identify and incorporate the related provisions and clauses .”</p> <p>As an example, show VG 7-5: 52.245-2, Government Property (Fixed-Price Contracts).</p>	

VG 7-5 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)

(a) *Government-furnished property.* (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as “Government-furnished property”).

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished “as is”) will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract’s delivery or performance dates.

* * * * *

7.1.1.5 BONDS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-12 to 7-14	<p>a. Define “bond”.</p> <p>“A bond is a written instrument executed by an offeror or contractor (the “principal”) and a second party (the “surety”) to assure fulfillment of the principal's obligations to the Government). If the principal fails to meet a covered obligation, the surety has to cover the Government's loss to the extent stipulated in the bond.”</p> <p>Bonds protect the Government against such risks as:</p> <ol style="list-style-type: none"> 1. Withdrawal of a bid by the apparent winning bidder 2. Failure to complete the work of the contract. 3. Failure by the contractor to pay subcontractors. <p>b. Describe conditions under which COs require offerors to submit bonds.</p> <p>Bonds are required for construction contracts in the U.S. over \$25,000. For other contracts, bonds are used only when deemed necessary by the CO.</p> <p>c. Tell the students that, “if you decide to require a bond, you must incorporate that requirement in the solicitation.”</p> <p>d. State that decisions on the type of contract to solicit, financing, Government property, and bonds are but four of many decisions to make in selecting provisions and clauses for the solicitation.</p>	




7.1.1.6 SOLICITATION

Ref.	Steps In Presenting The Topic	Instructor Notes
7-14 to 7-16	<p>a. Present the 2 types of solicitation formats:</p> <ol style="list-style-type: none"> 1. The Uniform Contract Format (UCF)—SF 33. 2. The Simplified Format—SF 1447. <p>b. Identify the four parts of a solicitation:</p> <ol style="list-style-type: none"> 1. The Schedule. 2. Contract Clauses. 3. Attachments. 4. Representations and Instructions. <p>c. Lead students through Exhibit 7-7 on pages 7-15 and 7-16.</p>	


7.1.2 SOLICITING OFFERS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-17	<p>a. Present the Setting: “Your IFB or RFP is complete and ready for release.”</p> <p>b. Present the Basic Business Question: “How can you best communicate the Government's need to the market, and how should you respond to feedback from the market on the solicitation?”</p> <p>c. List the steps:</p> <ol style="list-style-type: none"> 1. Publicize the requirement. 2. Answer inquiries. 3. Conduct prebid/preproposal conferences, where necessary. 4. Where necessary, amend or cancel the solicitation. 	

7.1.2.1 PUBLICIZING PROPOSED PROCUREMENTS

Ref.	Steps In Presenting The Topic	Instructor Notes
 7-17 to 7-18	<p>a. Question: Why is it important to publicize a solicitation? [Solicit answers from the class before providing your own]</p> <p>Answer: Publicizing:</p> <ul style="list-style-type: none"> • Increases competition • Broadens industry participation in meeting Government requirements • Assists small, small/ disadvantaged, and labor surplus area concerns in obtaining contracts and subcontracts <p>b. Describe the process of synopsisizing proposed procurements in the Commerce Business Daily.</p> <p>Explain that a CBD synopsis is generally required for acquisitions over \$25,000. Also point out there are some exceptions to this requirement at FAR 5.202.</p>	
 	<p>c. Question: Can you think of other ways to publicize the acquisition?</p> <p>Write their answers on a flipchart. Among the potential answers:</p> <ul style="list-style-type: none"> • Mail the RFP to companies on your mailing list [but warn the students that a notice of the contract action must be published in the CBD at least 15 days before issuance of the RFP.] • Post a notice of the IFB or RFP in public places. • Assist the business associations in disseminating information to their members. • Place a brief announcement in periodicals widely read by firms in the market at no cost to the Government. • Advertise on an electronic bulletin board. 	

7.1.2.2 PREAWARD INQUIRIES

Ref.	Steps In Presenting The Topic	Instructor Notes
7-19	<p>a. Explain that all inquiries must be referred to the CO to avoid situations that might be viewed as improper disclosure. Technical or other information shall be transmitted only by the CO or others having contractual authority.</p> <p> b. Playing the role of an offeror, ask the following questions and have the class respond for the CO.</p>	

Roleplay:

- Offeror: May I ask some questions about this RFP for upgrading pollution-control devices?
- Class: ? [Have the class answer for the Contracting Officer. The School solution: "I can try to help you, but I may be limited in what I can say. I can only give general information that is not prejudicial to other offerors. I wouldn't want to give you an unfair advantage over another. What are your questions?"]
- Offeror: I don't understand the clause on progress payments. Can you explain it to me in English?
- Class: ? [Have the class answer for the Contracting Officer. The School solution: "Let me explain."]
- Offeror: How much does the Government expect to pay for this contract? If I give you a proposal for \$9 million, would I be in the ballpark?
- Class: ? [Have the class answer for the Contracting Officer. The School solution: "I am not permitted to give out that kind of information."]
- Offeror: I believe paragraph 8 of the specification is ambiguous. As I read it, the requirement for replacing the filter support brackets is predicated on the assumption that rebuilding the filter adds significantly to its weight. However, my rebuilt filters only weigh a couple of pounds more than the originals. Is it okay if I base my proposal on the assumption that I can leave the existing brackets in place?
- Class: ? [Have the class answer for the Contracting Officer. The School solution: "I will confer with the Requirements Manager. If it appears that an ambiguity exists, we will amend the solicitation to correct it. If we believe the specifications are clear and unambiguous, we will not change them and will

Solicitation-Award Phase

expect your proposal to be responsive to our requirements. I will let you know.”]

Offeror: Can you at least tell me who I am competing against?

Class: ? [Have the class answer for the Contracting Officer. The School solution: “No.”]

Offeror: How about a ballpark figure of the number of companies competing for the award?

Class: ? [Have the class answer for the Contracting Officer. The School solution: “Sorry.”]



Offeror: I plan to hand-deliver my proposal. Can you give me directions on how to find the building where we are suppose to deliver the proposals?

Class: ? [Have the class answer for the Contracting Officer. The School solution: Provide address as shown on the solicitation, and recommend, as an alternative, mailing by certified mail five days in advance or express mail two days in advance—Advise the offeror that he is taking a risk in hand-carrying the offer.]

7.1.2.3 PREBID/PREPROPOSAL CONFERENCES

Ref.	Steps In Presenting The Topic	Instructor Notes
7-19 and 7-20	<p>a. Define prebid/preproposal conferences.</p> <p>A meeting between the Government and potential offerors, held before bid opening or before the closing date for proposals. The CO, or designated representative, conducts the conference.</p> <p>b. State their purposes.</p> <ul style="list-style-type: none">• Provide for inspection of the work site or GFP.• Explain complicated specifications and requirements.• Explain revisions to requirements.• Address offeror inquiries.	

7.1.2.4-7.1.2.5 AMENDING & CANCELLING SOLICITATIONS

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Define “amendment” in terms of amending a solicitation.” Define “cancellation” in terms of cancelling a solicitation. conferences	
 7-20 to 7-22	b. Question: When should a CO amend a solicitation and when should the CO cancel it? Have the class read pages 7-20 and 7-21. c. Show VG 7-6. Ask the students to identify which circumstances would give rise to an amendment and which would necessitate cancellation. Answers are provided for you in brackets.	
		

AMEND OR CANCEL?


1. Requirement no longer exists [CANCEL]
2. Correct or clarify ambiguous solicitation [AMEND]
3. Change quantity requirements, specifications, delivery requirements, or due date for offer [AMEND]
4. Funds are no longer available [CANCEL]
5. Overall scope of proposed contract has changed substantially relative to the original synopsis and solicitation [CANCEL--PERHAPS RESOLICIT]

VG 7-6

7.1.2.4-7.1.2.5 AMENDING & CANCELLING SOLICITATIONS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Describe the form (i.e., SF 30) for preparing amendments and policies on issuing amendments.</p> <p>With respect to IFBs, a copy of the amendment must be sent to all bidders who were provided a copy of the IFB. With respect to RFPs, a copy of the amendment must be sent:</p> <ul style="list-style-type: none"> • Pre-closing date: to all offerors provided a copy of the RFP • Post-closing date: to all responding offerors • After the competitive range has been established: to all offerors in the range <p>e. List steps in cancelling a solicitation.</p> <ul style="list-style-type: none"> • Return unopened bids or proposals • Send a cancellation notice to all prospective offerors • Briefly explain in the cancellation notice why the solicitation was cancelled • Consider placing a cancellation notice in the CBD 	

7.2 EVALUATION (SEALED BIDDING)

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 7-7: Evaluation (Sealed Bidding) .	

Solicitation	Evaluation— Sealed Bidding	Evaluation— Negotiation	Award
	Bid Evaluation Processing Bids Time Extensions for Bids Late Offers Bid Prices Responsiveness		

VG 7-7

- b. Present the Setting: “An IFB has been sent out, and the CO has received a number of bids in response.”
- c. Present the Basic Business Question:
“Which, if any, of the submitted bids should be considered for award?”
- d. List the steps:
1. Process and open the bids.
 2. Determine whether award can be made within the acceptance period on the submitted bids.
 3. Determine whether any late bids can be considered.
 4. Identify the lowest price bid and determine whether that price is fair and reasonable.
 5. Determine whether low bid is responsive.

7.2.1 PROCESSING BIDS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-24	<p>a. Reintroduce sealed bidding—</p> <p>The essence of sealed bidding is that sealed bids are publicly opened, and that award is made to the lowest responsive, responsible bidder.</p> <p>b. Present steps in processing bids.</p> <ul style="list-style-type: none"> • Bids received are not opened until the time specified for bid opening • Bids are secured in a locked box, to prevent tampering • All bids received are accounted for • Bids are publicly opened at the time set for bid opening, and are opened only by an authorized person • Prices bid are properly recorded on an "Abstract of Offers" form. <p>c. Describe the “firm bid rule”, in relation to a bidder's request to withdraw a bid.</p> <p>A bid may be modified or withdrawn by written or telegraphic notice prior to the exact time set for opening. The "firm bid rule" generally precludes a bidder from withdrawing the bid between bid opening and the expiration of the bid acceptance period.</p>	



7.2.2 TIME EXTENSIONS FOR BIDS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-24 and 7-25	<p>a. Define the term “bid acceptance period”</p> <p>The date specified by the bidder on which the bid expires. After that date, the bidder no longer has to honor the bid.</p> <p>b. Who determines the “bid acceptance period”?</p> <p>Ordinarily, the bidder is free to establish any period to its liking on the bid. However, sometimes the Government establishes a “minimum” bid acceptance period in the IFB.</p> <p>c. Question: What if the CO cannot award the contract within the acceptance period of the low bid?</p> <p>Answer: If the Government does not award the contract within the acceptance period, the bid is no longer valid. This requires that the Government award the contract as quickly as possible, or request bidders to extend their bid acceptance periods.</p>	

7.2.3 LATE BIDS

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="142 346 227 430"></div> <div data-bbox="151 457 215 489">7-25</div>	<p>a. Question: A bidder arrives in the bid room seconds after the bid opening officer has started to open bids. If it is 10% lower than any other bid, can it be considered? [Solicit answers from the class before providing your own]</p> <p>Answer: No—it is late.</p> <p>b. Question: What if that bidder had a flat tire on the way to the bid opening? [Solicit answers from the class before providing your own]</p> <p>Answer: No—the bid would be late.</p> <p>c. Define late bids.</p> <p>Bids received after the exact time set for opening of bids, in the office designated in the IFB.</p> <p>d. Question: Can COs ever consider a late bid ? [Solicit answers from the class before providing your own]</p> <p>Answer: Yes. Examples from FAR 14.304-1(a):</p> <ul style="list-style-type: none"> • If sent by registered or certified mail not later than five calendar days before the specified bid receipt date. • If sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee not later than 5:00 PM at the place of mailing 2 working days prior to the date specified for receipt of bids. • If sent by mail, and late receipt was due solely to mishandling by the Government after receipt at the Government installation. 	

7.2.4 BID PRICES & 7.2.5 RESPONSIVENESS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-25 to 7-28	<p>a. Identify the two basic steps in price analysis.</p> <ol style="list-style-type: none"> 1. Identifying the low bid or bids. 2. Determining whether the low bid is fair and reasonable. <p>b. Identify the process for calculating the low bid or bids.</p> <ul style="list-style-type: none"> • Apply price-related factors to identify the “evaluated” price of each bid. • Compare the “evaluated” prices. • Identify the low bid for each potential award. • Where necessary, use FAR tiebreakers: <ol style="list-style-type: none"> 1st. Small business concern in a labor surplus area. 2nd. Small business concerns. 3rd. Labor surplus area concerns. 4th. Drawing by lot. <p>c. Describe factors in determining whether a price is fair and reasonable, such as:</p> <ul style="list-style-type: none"> • Market trends and conditions. • Amount of competition. • Prices paid in comparable acquisitions. 	
	<p>d. Question: Suppose 3 retail outlets have bid per unit prices of \$300, \$341, and \$489 for 1,000 copies of word processing software. Is \$300 a fair and reasonable price? [Solicit answers from the class before providing your own]</p> <p>Answer: Perhaps.</p>	
	<p>e. Question: Now suppose I tell you that mail order houses, none of which bid, offer the same brands of software in their published catalogs at \$210 - \$245 per unit. Do you still think that \$300 per unit is a fair and reasonable price? [Solicit answers from the class before providing your own]</p> <p>Answer: No.</p>	


7.2.4 BID PRICES & 7.2.5 RESPONSIVENESS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Question: What are the CO's options if the price appears unreasonably high? [Solicit answers from the class before providing your own]</p> <p>Answer: Cancel and either negotiate or resolicit (see Section 7.1.2.5)</p>	
Page 7-22	<p>g. Lead the students through reasons for cancellation after opening on page 7-22 of the text/reference.</p>	
	<p>h. Question: What are the CO's options if the price appears unreasonably low? [Solicit answers from the class before providing your own]</p> <p>Answer: Verify the bid—which we will discuss at Section 7.4.1.1.</p> <p>i. Transition—State that, once the CO has identified the low bid and determined that it is fair and reasonable, the next question is whether that bid is responsive.</p>	

7.2.4 BID PRICES & 7.2.5 RESPONSIVENESS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>j. Define the term “Responsive Bid” and state the CO's only option if a bid is nonresponsive.</p> <p>“A responsive bid is one that conforms to the essential requirements of the IFB.” If a bid is nonresponsive, the CO must reject it.</p> <p>k. Describe “minor informalities and irregularities.”</p> <p>These are immaterial defects that can be corrected or waived without being prejudicial to the other bidders. Examples are listed at FAR 14.405.</p>	
<div data-bbox="284 814 365 892" style="border: 1px solid black; padding: 2px; display: inline-block; width: 30px; height: 30px; text-align: center; line-height: 30px;">?</div>	<p>l. Question: A CO is trying to determine whether or not the lowest bid is responsive to the solicitation.</p> <p>Firm A bid \$100,000 but took exception to the delivery date—A promises delivery on October 2, although the IFB calls for delivery on September 30.</p> <p>Firm B bid \$180,000 but failed to furnish the "Contingent Fee Representation and Agreement."</p> <p>Firm C bid \$190,000 and did not vary in any respect from the terms and conditions in the IFB.</p> <p>Assuming the bidders are all responsible and that the bids are equal in all other respects, who wins? [Solicit answers from the class before providing your own]</p> <p>Answer: Firm B. Bid A is nonresponsive; once a bid is nonresponsive it cannot be made responsive. Bid B, the next lowest bid, suffers from a “minor informality.” If Firm B provides the missing representation, it will be awarded the contract.</p>	

7.3 EVALUATION (NEGOTIATION)

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 7-8 : Evaluation (Negotiation).	

Solicitation	Evaluation— Sealed Bidding	Evaluation— Negotiation	Award
		Proposal Evaluation Processing Proposals Technical Evaluation Price Objectives Cost and Pricing Data Audits Cost Analysis Evaluation Other Terms and Conditions Competitive Range Discussions Factfinding Negotiation Strategy Conducting Negotiations	

VG 7-8

- 7-29 b. Present the Setting:
- “The Setting: Our CO has issued the RFP. The closing date is fast approaching.”
- c. Present the Basic Business Question:
- “Which, if any, of the submitted proposals should be considered for award, and what needs to be discussed with the offerors?”

7.3 EVALUATION (NEGOTIATION)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. List the steps:</p> <ol style="list-style-type: none"> 1. Process and open the proposals. 2. Obtain an evaluation of the technical proposal. 3. Establish a prenegotiation position on price. 4. Where necessary, obtain cost and pricing data from the offeror. 5. Where necessary, request an audit of the cost and pricing data. 6. Prepare prenegotiation positions on elements of cost. 7. Evaluate and establish prenegotiation positions on other terms and conditions. 8. Determine the competitive range. 	

7.3.1.1 PROCESSING PROPOSALS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-30	<p>a. Present the CO's initial steps in processing proposals:</p> <ul style="list-style-type: none">• Before the closing date, proposals are secured, unopened, in a locked file.• After the closing date, the CO privately opens and records the proposals.• CO compares proposals with the requirements of the RFP to identify any variances from the RFP's terms (which may require discussion).• Technical proposals are forwarded to technical evaluators.• Price proposals might be assigned to Price/Cost Analysts.• If field pricing support or an audit is required, a copy of the RFP and proposal will be furnished to the cognizant activity.	

7.3.1.2 TECHNICAL EVALUATION

Ref.	Steps In Presenting The Topic	Instructor Notes
7-30 to 7-31	<p>a. Present reasons for requesting a technical evaluation.</p> <ul style="list-style-type: none"> • To ensure understanding of the requirement. • To establish the competitive range. • To rank proposals on the basis of technical factors and to justify the rankings. • To provide data on the proposed labor mix, hours of direct labor, material mix, material quantities, etc., to support the CO's analysis of proposed costs. • To identify technical negotiation objectives and the need for factfinding. • To prepare the agenda for discussions with the offerors. 	
<div data-bbox="289 856 370 930" data-label="Image"> </div>	<p>b. Question: Upon opening a proposal, what documents should the CO share with the technical analysts? [Solicit answers from the class before providing your own]</p> <p>Answer:</p> <ul style="list-style-type: none"> • The Schedule from the RFP. • Evaluation factors in Section M of the RFP, along with any special standards of responsibility. • Instructions for proposal preparation in Section L. • The offeror's technical proposal. 	


7.3.1.3 PRICE OBJECTIVES

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="142 346 227 430" data-label="Image"> </div> <div data-bbox="142 451 203 493" data-label="Text"> <p>7-32</p> </div>	<p>a. Question: “How does price analysis in negotiated procurements differ from price analysis in sealed bidding?” [Solicit answers from the class before providing your own]</p> <p>Answer: In both cases:</p> <ul style="list-style-type: none"> • Prices must be evaluated against price-related factors, and • Prices must be compared against other data to determine whether they are fair and reasonable. <p>The difference involves the decisions made on the basis of price analysis. In negotiated acquisitions, price analysis is the basis for decisions on:</p> <ul style="list-style-type: none"> • The need for discussions (i.e., can award be made without discussions?). • The competitive range. • Negotiation objectives—especially in terms of tradeoffs between price and other terms and conditions. <p>Moreover, if the CO cannot otherwise determine whether the prices are reasonable, the CO can request cost breakdowns to verify the realism of proposed costs and overall reasonableness of the proposed price.</p>	


7.3.1.4 COST AND PRICING DATA

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="289 1056 370 1136" style="border: 1px solid black; padding: 2px; display: inline-block;">?</div> 7-32 to 7-33	<p>a. Define “cost and pricing” data.</p> <p>... all facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. ... [namely—] all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.</p> <p>b. State that CO's must tell the offerors:</p> <ul style="list-style-type: none"> • Whether cost and pricing data must be provided. • Whether complete data are required. • The form in which the data must be provided. • Whether the data must be certified. <p>c. Question: “When is an offeror required to certify cost or pricing data?”</p> <p>Answer: When (1) the costs are likely to exceed \$100,000 and (2) the Government cannot determine the reasonableness of proposed prices without such data.</p> <p>Stress that offerors generally do not submit or certify data when the award price is based on:</p> <ul style="list-style-type: none"> • Law or regulation, • Adequate price competition, or • Established catalog or market prices for commercial items sold in substantial quantities to the general public. <p><i>For DoD and other title 10 agencies, the threshold is now \$500,000 . It remains at \$100,000 for most civilian agencies.</i></p> <p>d. Question: “What does the offeror certify?”</p> <p>Answer: That the data are accurate, complete, and current as of the date on which price negotiations were concluded and price agreement was reached.</p>	

7.3.1.5 AUDITS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-33 to 7-34	<p>a. Describe audit reports.</p> <p>Auditors report such things as:</p> <ul style="list-style-type: none"> • The firm's basis and method for estimating costs. • The accuracy, completeness, and currency of submitted cost or pricing data. • Additional cost or pricing data of relevance to the proposal. • The dollar impact of technical analyses received by the auditor. • The adequacy of the offeror's estimating methods and accounting systems. 	
	<p>b. Question: “When should you obtain an audit of an offeror's cost breakdowns?” [Solicit answers from the class before providing your own]</p> <p>Answer: When the contract's price or total cost is likely to exceed \$500,000.</p>	


7.3.1.6 COST ANALYSIS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-34 to 7-35	<p>a. Define cost analysis.</p> <p>The review and evaluation of the separate cost elements and proposed profit stated in an offeror's proposal.</p> <p>b. List typical elements of cost.</p> <ul style="list-style-type: none"> • Direct materials (quantity and price). • Direct labor (quantity and rates). • Indirect costs (e.g., Overhead and General and Administrative). • Subcontracts. • Other direct costs (e.g., Travel and Royalties). • Profit or fee. 	
	<p>c. Question: "What is the central issue in cost analysis?" [Solicit answers from the class before providing your own]</p> <p>Answer: Whether the proposed costs are realistic and otherwise allowable (see Chapter 8, Exhibit 8-12).</p> <p>Caution the students against preoccupation with any one element of cost or believing that an agreement must be reached on every individual element.</p> <p>In negotiated procurements, the ultimate goal is an agreement on an overall price and related terms and conditions (e.g., contract type) that, <u>taken as a whole</u>, is fair and reasonable to both parties.</p>	

7.3.1.7 EVALUATING OTHER TERMS AND CONDITIONS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-35	<p>a. Identify examples of terms and conditions other than the SOW and price that may be put on the table either by the CO or the offeror during discussions.</p> <ul style="list-style-type: none"> • Use of a different type of contract than solicited • Provision of financing or a different type of financing than contemplated in the RFP. • Furnishing property for the contract • Leasing rather than purchasing • Extending the proposed delivery schedule 	

7.3.1.8 COMPETITIVE RANGE

Ref.	Steps In Presenting The Topic	Instructor Notes
7-35 to 7-36	<p>a. Define “competitive range.”</p> <p>The competitive range includes all proposals that will be discussed with offerors. CO's establish the range on the basis of technical evaluation factors and price.</p> <p>Only include offers in the competitive range that have a reasonable chance of being selected for award.</p>	
	<p>b. Question: “How does a CO remove a proposal from the competitive range?” [Solicit answers from the class before providing your own]</p> <p>Answer: By written notice to the offeror.</p>	

7.3.2 DISCUSSIONS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-36	<p>a. Present the Setting:</p> <p>“The CO has completed an initial analysis of proposals in the competitive range.”</p> <p>b. Present the Basic Business Question:</p> <p>“What strategies and tactics will you employ in discussing proposals with offerors?”</p> <p>c. List the steps:</p> <ol style="list-style-type: none"> 1. Conduct any necessary factfinding to complete analysis of the proposals. 2. Prepare the strategy for conducting negotiations. 3. Conduct discussions with representatives of the offeror. 	

7.3.2.1 FACTFINDING

Ref.	Steps In Presenting The Topic	Instructor Notes
7-36	<p>a. Define factfinding .</p> <p>The process of identifying and obtaining information from the offeror necessary to complete the evaluation of the offeror's proposal. The focus is on clarifying proposals, not on bargaining.</p> <p>b. Based on factfinding, the CO might:.</p> <ul style="list-style-type: none"> • Revise prenegotiation objectives. • Eliminate the proposal from the competitive range. • Set up another round of factfinding. <p>c. Distinguish factfinding from negotiation.</p> <p>Factfinding's goal is to clarify proposals, not bargaining. CO's must ensure that factfinding sessions do not turn into negotiations, especially if the CO has not yet had a chance to develop a strategy for the negotiations.</p>	

7.3.2.2 NEGOTIATION STRATEGY

Ref.	Steps In Presenting The Topic	Instructor Notes
7-37	<p>a. Present steps in preparing for negotiations.</p> <ul style="list-style-type: none"> • Identify best case vs. worst case positions for each prenegotiation objective. • Identify the relative and absolute priority of each objective. • Develop an overall strategy for accomplishing the Government's highest priority objectives. • Research the offeror's negotiation style and likely strategy. • Prepare a prenegotiation plan. • Brief management on the plan. • Review and rehearse the plan with the Government's negotiation team. • Prepare the negotiation agenda. <p>b. Identify typical elements of a negotiation strategy.</p> <ul style="list-style-type: none"> • Opening positions. • Planned counteroffers. • Potential exchanges of concessions and tradeoffs. • Specific tactics (which to employ and when). <p>c. Describe typical elements of a negotiation plan.</p> <ul style="list-style-type: none"> • Target objectives. • Major issues and concerns. • Summary of the strategy. • Team members and roles. • Schedule. 	

7.3.2.3 CONDUCTING NEGOTIATIONS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-37 to 7-39	<p>a. Define negotiation.</p> <p>Negotiation means bargaining. Both parties, the Government and the offeror, establish their objectives and enter into the negotiations with the expectation of bargaining to achieve those objectives.</p> <p>Both negotiation teams have a leader, with the CO as the Government leader.</p> <p>b. Present some typical (and acceptable) tactics.</p> <ul style="list-style-type: none"> • Questions. • Trial balloons (e.g., “what if?”) • Silence. • Casting the meeting as an exercise in problem-solving (win-win) approach. • Discussing issues in order of ease of agreement. • Hold major concessions for a “walk in the woods”—a separate meeting between lead negotiators. • Hold major concessions until the deadline is near. • Call caucuses and breaks. <p>c. Present the “don'ts” of conducting discussions.</p> <p>Lead the class through Exhibit 7-18 on page 7-39 of the text.</p> <p>d. Describe the intended outcome of sole source negotiations:</p> <p>Acceptance of a final offer from the offeror. However, the CO is not obliged to accept the final offer on the table if that offer is not fair and reasonable.</p> <p>e. Describe the intended outcome of competitive negotiations:</p> <p>Request from the CO for the offeror's Best and Final Offer. The CO will compare this BAFO with those of other firms in the competitive range to recommend an offeror for award.</p> <p>f. Describe Price Negotiation Memoranda.</p>	

7.4 AWARD

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 7-9 : Award	

Solicitation	Evaluation— Sealed Bidding	Evaluation— Negotiation	Award
			Selection for Award Mistakes in Offers Responsibility Subcontracting Goals Preparing Awards Executing Awards Award Debriefing Protests Fraud and Exclusion

VG 7-9

- 7-40
- b. Present the Setting:
 “You have completed your analysis of the offers”
- c. Present the Basic Business Question:
 “Is the offeror in line for award responsible, and is the offer free of any clerical or other mistakes?”
- d. List the steps:
1. Resolve alleged mistakes.
 2. Determine the responsibility of the offeror in line for award.
 3. Obtain any required subcontracting plans and negotiate improvements in them.
 4. Prepare awards and obtain the necessary approvals.

7.4.1 .1 MISTAKES IN OFFERS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-41 to 7-42	<p>a. Define the two types of apparent mistakes that a CO might catch when reading offers.</p> <ul style="list-style-type: none"> • Clerical mistakes, such as a missing decimal point. • Non-clerical mistakes, such as a price that is so much lower than other bids or your own estimate, based on market research, as to suggest the possibility of error. <p>b. Show VG 7-10: Mistakes in Bids. Ask the class to call out anything that suggests that the bidder may have made a mistake in preparing its bid.</p>	



MISTAKES IN BIDS— Spot the mistakes in JJ's Bid

1. Line Item Price

Bid A:

Type A Nails (50 lbs) \$12.00

Type B Nails (50 lbs) \$1220

Type C Nails (50 lbs) \$12.40

Type D Nails (50 lbs) \$4.45*

*Next low bid for Type D nails: \$20.19.

2. Discounts

1%/10 days, 2%/20 days, 5%/30 days

3. FOB Origin \$3.00

FOB Dest. \$2.50

VG 7-10




Answers to VG 7-10:

Item 1: Type B appears to be missing a decimal point. Contractor would have to provide evidence (e.g., worksheets, vendor quotes) to correct mistake. For Type D, the bid appears to be a non-clerical mistake.



Item 2: Discounts are reversed.

Item 3: FOB Origin and FOB Dest. are reversed.

7.4.1 .1 MISTAKES IN OFFERS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>c. Question: “What should the CO do with Bid A?” [Solicit answers from the class before providing your own]</p> <p>Answer: Call the vendor and ask the vendor to verify the Bid.</p>	
	<p>d. Question: “If Bidder A admits to the clerical mistakes, what should the CO do?” [Solicit answers from the class before providing your own]</p> <p>Answer: Obtain written verification of the mistakes from the bidder and correct the bid by attaching the written verification to the bid.</p>	
	<p>e. Question: “The bidder alleges that the bid of \$4.45 for Type D nails is a mistake—that the bid should have been \$20.18. What should the CO do?” [Solicit answers from the class before providing your own]</p> <p>Answer: Instruct the bidder to (1) allege the mistake in writing and (2) request withdrawal or correction of the bid. Also notify the bidder that the allegation must be supported by such evidence as:</p> <ul style="list-style-type: none"> • Certified copies of work papers and other data used in preparing the bid. • Copies of subcontractor and supplier quotes. • Published price lists. <p>Based in part on whether the Bidder A meets its burden of proving that a mistake was made and that the intended bid was \$20.18, the CO might (1) permit correction, (2) permit withdrawal , or (3) award the contract at the price of \$4.45. The FAR establishes precise rules for determining which option applies.</p>	



7.4.1 .1 MISTAKES IN OFFERS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Question: “If the CO had discovered such apparent mistakes in a proposal, what would the CO do?” [Solicit answers from the class before providing your own]</p> <p>Answer: Put them on the table as part of the negotiations.</p>	
	<p>g. Question: “Suppose the offeror waits until after award to allege that it erred in offering Type D nails at \$4.45 per 50 pounds. What will the CO do in that case?” [Solicit answers from the class before providing your own]</p> <p>Answer: The FAR establishes precise rules for responding to such allegations. These rules are the same regardless of the method of procurement.</p> <p>Step 1: The offeror must supply evidence (1) that a mistake was made and (2) that the mistake was mutual or “so apparent as to have charged the CO with notice of the probability of the mistake.”</p> <p>Step 2: The CO must determine whether the offeror met the burden of proof in step 1. If not, the contract stands at \$4.45 per 50 pounds.</p> <p>Step 3: If the offeror meets its burden of proof, the CO might (1) rescind the contract and resolicit or (2) reform the contract to reflect the intended price. The FAR establishes precise rules for determining which option applies.</p>	

7.4.1 .2 RESPONSIBILITY

Ref.	Steps In Presenting The Topic	Instructor Notes
7-43 to 7-44	<p>a. Define responsibility.</p> <p>To be considered responsible, an offeror must:</p> <ul style="list-style-type: none"> • Have adequate financial resources to perform the contract, or the ability to obtain them. • Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments. • Have a satisfactory performance record. • Have a satisfactory record of integrity and business ethics. • Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them. • Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them. • Be otherwise qualified and eligible to receive an award under applicable laws and regulations. • Meet any special standards stated in the solicitation 	
<div data-bbox="289 1136 370 1213" style="border: 1px solid black; padding: 2px; display: inline-block;">?</div>	<p>b. Question: “The FAR requires that contracts be awarded only to responsible offerors. Why?” [Solicit answers from the class before providing your own]</p> <p>Answer: Awarding solely on the basis of price can be false economy if there is substantial risk of subsequent default, late deliveries, or unsatisfactory quality, or any other major breach of the contract's terms and conditions.</p> <p>c. Stress that the burden of proof is on the contractor to affirm its responsibility.</p>	

7.4.1 .2 RESPONSIBILITY

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Question: “Who decides whether or not the offeror is responsible?” [Solicit answers from the class before providing your own]</p> <p>Answer: In most cases, the CO. However, SBA reserves the right to determine the responsibility of small business concerns. If, despite CO's concerns, SBA decides that a small business concern is responsible, SBA issues a Certificate of Competency.</p> <p>Note, however, that COs may determine that a small business is nonresponsible without consulting SBA if:</p> <ul style="list-style-type: none"> • The small business is not qualified and eligible to receive an award under applicable laws or regulations (e.g., has violated the Clean Air Act) or • The small business is on the “List of Parties Excluded from Government Procurement Programs.” 	
	<p>e. Question: “What is the “List of Parties Excluded from Government Procurement Programs.”?” [Solicit answers from the class before providing your own]</p> <p>Answer: This document lists firms that have been suspended, proposed for debarment, debarred, or otherwise declared ineligible. COs check this list prior to making award, and no award may be made to a firm on the list.</p>	

7.4.1 .3 SUBCONTRACTING GOALS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-44 to 7-45	<p>a. State the Government's socioeconomic goal for subcontracting:</p> <p>To provide subcontracting opportunities to small and small/disadvantaged business concerns.</p> <p>b. Describe subcontracting plans as a method of advancing this goal.</p> <p>Subcontracting plans are prepared by offerors and become a part of the contract. Such plans must, among other things, include:</p> <ul style="list-style-type: none"> • % goals for subcontracting with small business and small disadvantaged business concerns. • Procedures for providing small business concerns and small disadvantaged business concerns with equitable opportunities to compete for subcontracts. • Reporting requirements. • Recordkeeping requirements. <p>c. State the circumstances under which subcontracting plans are required:</p> <p>If the solicitation is for a contract expected to exceed \$500,000 (\$1,000,000 for construction) that has subcontracting possibilities, the IFB or RFP must require the apparently successful offeror to submit an acceptable subcontracting plan.</p> <p>There are a few exceptions to this requirement (most notably, for prime contractors that are small business concerns).</p> <p>d. State the impact if the CO finds that the subcontracting plan is not acceptable.</p> <p>In negotiated acquisitions, the CO may negotiate improvements to the plans during discussions with offerors in the competitive range. If the plan as finally submitted is not acceptable, the CO may not award to that offeror.</p> <p>In sealed bidding, the CO may provide an opportunity for the bidder to resubmit the plan if it was incomplete. However, if the proposed subcontracting plan is not acceptable, the CO may not make award to that bidder.</p>	

7.4.1 .4 PREPARING AWARDS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-45 to 7-46	<p>a. Identify steps in preparing awards.</p> <ol style="list-style-type: none"> 1. Verify that funds are available for award. 2. Finalize the contract. <p>Contracts consist of the accepted offer (bid or BAFO), the Schedule (Part I of the UCF), Contract Clauses (Part II of the UCF), Attachments (Part III of the UCF), and any amendments to the IFB or RFP. In addition, the offeror's representations, certifications, and other statements are part of the resulting contract even though not physically attached to it.</p> <ol style="list-style-type: none"> 3. Obtain all necessary clearances and approvals per the policies of that contracting activity. 	

7.4.2 EXECUTING AWARDS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-46	<p>a. Present the Setting:</p> <p>“The contract is ready for award.”</p> <p>b. Present the Basic Business Question:</p> <p>“How should the contract be executed and announced?”</p> <p>c. List the steps:</p> <ol style="list-style-type: none"> 1. Execute the award and notify interested parties. 2. Debrief unsuccessful offerors, where required and as requested. 	

7.4.2.1 AWARD

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="289 348 370 428"></div> <p>7-46 to 7-47</p>	<p>a. Question: “How is a contract awarded?” [Solicit answers from the class before providing your own]</p> <p>Answer: By signing the contract itself or by issuing a Notice of Award. When the SF 33 is employed, the CO signs Block 27 in the subsection entitled AWARD. Only a duly appointed CO, acting within the scope of his or her authority, may sign a contract.</p>	
<div data-bbox="289 674 370 753"></div>	<p>b. Question: “What is a bilateral award document, and when would this be necessary?” [Solicit answers from the class before providing your own]</p> <p>Answer: The SF 26 is a bilateral award document, used when an offer is changed. Both the offeror and the CO must sign it, thereby reflecting acceptance of the changed (new) offer.</p>	
<div data-bbox="289 1010 370 1089"></div>	<p>c. Question: “Who is notified of the award?” [Solicit answers from the class before providing your own]</p> <p>Answer:</p> <ul style="list-style-type: none"> • Unsuccessful offerors • SBA, Labor, and other such Government agencies* • The public at large, through a CBD synopsis of the award and other announcements • The Federal Procurement Data System. 	

* Examples: SBA per FAR 19.705-6, when the contract contains a subcontracting plan; Labor per FAR 22.1017—when a service contract over \$25,000 has been awarded by an agency that does not report to the FPDS; EPA per FAR 23.106—when considering or making award to an offeror that the EPA is considering for listing as a violating facility under the Air or Water Acts.

7.4.2.2 DEBRIEFING

Ref.	Steps In Presenting The Topic	Instructor Notes
7-47	<p>a. Tell the class when COs must debrief an unsuccessful offerors (e.g., when—</p> <ul style="list-style-type: none"> • Award is based on technical and/or business management factors, • An offeror asks, in writing, for the debriefing. <p>b. Define “debriefing” .</p> <p>Debriefing is the process of telling unsuccessful offerors why their offers were deficient, by describing significant weak or deficient factors in the offeror's proposal.</p> <p>c. State the limits on what may be divulged.</p> <p>COs may not:</p> <ul style="list-style-type: none"> • Do point by point comparisons of the offer with other offers. • Reveal the relative merits or technical standing of competitors. • Reveal the evaluation scoring. • Reveal any information that may not be divulged under the FOIA (e.g., trade secrets). 	



7.4.3 PROTESTS

Ref.	Steps In Presenting The Topic	Instructor Notes
7-47 to 7-48	<p>a. Present the Setting: “The contract has been awarded.”</p> <p>b. Present the Basic Business Question: “How can any protests of the award be resolved?”</p> <p>c. Define “protest.” A written objection by an interested party to a solicitation, proposed award, or the award.</p> <p>d. Define “interested party.” An actual or prospective offeror whose direct economic interest would be affected by the award of the contract, or by a failure to award a contract.</p> <p>e. Describe the CO's role in resolving protests. When possible, protests (or potential protests) should be discussed and resolved between the protestor and the CO. If the protester wants to pursue the issue further, the protester will file the protest with either the Comptroller General or—for ADP awards—to the General Services Board of Contract Appeals (GSBCA), as appropriate. When a protest is lodged with these forums, promptly supply any information required by GAO or the GSBCA; otherwise, the agency's case may be lost due to untimely responses.</p>	

7.4.3 PROTESTS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="248 346 971 384">f. State the potential impact of a protest to GAO.</p> <p data-bbox="297 401 959 464">With respect to protests to the Comptroller General, COs generally:</p> <ul data-bbox="310 474 959 611" style="list-style-type: none">• Delay award, when notice of the protest arrives prior to award.• Suspend or terminate award, if the notice comes within 10 calendar days after award. <p data-bbox="297 625 971 783">After reviewing the protest, the Comptroller General may recommend such actions as cancellation and resolicitation. The Comptroller General may also declare that an interested party is entitled to the costs of:</p> <ul data-bbox="310 793 971 898" style="list-style-type: none">• Filing and pursuing the protest, including reasonable attorney fees, and• Bid or proposal preparation	

7.4.4 FRAUD

Ref.	Steps In Presenting The Topic	Instructor Notes
7-49	<p>a. Present the Setting:</p> <p>“You have conducted a bid opening for the purchase of office equipment and are now examining the bids. You notice that the two lowest bidders have identical prices for several of the line items.”</p> <p>b. Present the Basic Business Question:</p> <p>“Has there been any evidence of fraud or other misconduct in awarding the contract?”</p> <p>c. Define fraud.</p> <p>A felonious act of corruption, or an attempt to cheat the Government or corrupt its agents.</p> <p>Point out that those contractors found guilty of fraud, or those who have seriously violated the terms of a Government contract or subcontract, may be placed on the "List of Parties Excluded from Government Procurement Programs."</p> <p>d. Identify potential indicators of fraud.</p> <ul style="list-style-type: none"> • False invoices • Phantom contractors • Falsification of Government Furnished Property records • Unbalanced bidding • Unfair labor practices 	
	<p>e. Question: “Are identical bids a possible fraud indicator?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes, if there is some reason to believe that the bids resulted from collusion.</p>	
	<p>f. Question: “What should the CO when bids are identical?” [Solicit answers from the class before providing your own]</p> <p>Answer: Per FAR 3.303, report the identical bids along with any evidence that the bids resulted from collusion.</p>	

RECAP OF LESSON 7



a. Show VG 7-11 and leave it in view during the recap.

Solicitation	Evaluation— Sealed Bidding	Evaluation— Negotiation	Award
Terms and Conditions Contract Types Letter Contracts Contract Financing Use of Gov't Property & Supply Sources Bonds (Need for bonds) Solicitation Preparation Soliciting Offers Publicizing Proposed Procurements Prebid/Preproposal Conferences Amending Solicitations Cancelling Solicitations	Bid Evaluation Processing Bids Time Extensions for Bids Late Offers Bid Prices Responsiveness	Proposal Evaluation Processing Proposals Technical Evaluation Price Objectives Cost and Pricing Data Audits Cost Analysis Evaluation Other Terms and Conditions Competitive Range Discussions Factfinding Negotiation Strategy Conducting Negotiations	Selection for Award Mistakes in Offers Responsibility Subcontracting Goals Preparing Awards Executing Awards Award Debriefing Protests Fraud and Exclusion

VG 7-11

b. Recap the Business Questions that were addressed in Lesson 7.

LESSON 7 BASIC BUSINESS QUESTIONS

7.1.1 Terms and Conditions—What terms and conditions should be incorporated in the solicitation?

7.1.2 Soliciting Offers—How can you best communicate the Government's need to the market, and how should you respond to feedback from the market on the solicitation?

7.2.1 Bid Evaluation—Which, if any, of the submitted bids should be considered for award?

7.3.1 Proposal Evaluation—Which, if any, of the submitted proposals should be considered for award, and what needs to be discussed with the offerors?

7.3.2 Discussions—What strategies and tactics will you employ in discussing proposals with offerors, and how can you obtain and evaluate Best and Final Offers?

7.4.1 Selection for Award—Is the offeror in line for award responsible, and is the offer free of any clerical or other mistakes?

7.4.2 Executing Awards—How should the contract be executed and announced?

7.4.3 Protests—How can any protests of the award be resolved?

7.4.4 Fraud—Has there been any evidence of fraud or other misconduct in awarding the contract?

LESSON 8

POST-AWARD ADMINISTRATION PHASE

Post-Award Administration Phase

TOPIC: POST-AWARD ADMINISTRATION PHASE

Ref: Chapter 8


Objective: When you finish this introduction, your students must be able to:

- List and describe duties related to contract administration "start-up".
- List and describe duties related to assuring quality and resolving performance problems.
- List and describe duties related to payment and accounting.
- Define "closeout".

Time: 12:40 PM — 80 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 8-1: Post-Award Administration Phase. b. Restate the related business questions (see below).	

Functions*

Related Business Questions

Start-Up

8.1.1 What are the critical post-award tasks and milestones, who should be responsible for each task and milestone, and should you provide an orientation to CORs and the contractor on their respective tasks and responsibilities under the contract?

8.1.2 When an indefinite-delivery contract has been established, how are goods and services ordered?

8.1.3 Should you consent to proposed subcontracts?

Quality Assurance

8.2.1 How can you detect problems with the contract, what remedies are available, and how should the problems be resolved?

8.2.2 If property has been furnished to the contractor, how can you ensure that it will be used properly and returned whole to the Government?

8.2.3 Should you report poor performance for potential suspension or debarment?

Payment and Accounting

8.3.1 What is owed to the contractor, and when and how should payment be made?


8.3.2 Has the Government been adversely impacted by flaws in the contractor's estimating and accounting of costs and if so, how can restitution be made?

Closeout

8.4 How do you closeout the contract?

*(From VG 8-1)

8.1.1 PLANNING


Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 8-2 : Solicitation.	

Start-Up	Quality Assurance	Payment and Accounting	Closeout
Planning Contract Administration Planning Post-Award Orientations Ordering Ordering Against Contracts/Agreements Subcontracting Consent to Subcontracts			

VG 8-2

8-3	b. Present the Setting: “The contract has been awarded.” c. Present the Basic Business Question: “What are the critical post-award tasks and milestones, who should be responsible for each task and milestone, and should you provide an orientation to CORs and the contractor on their respective tasks and responsibilities under the contract?” d. List the Steps: <ol style="list-style-type: none"> 1. Draft and implement a contract administration plan. 2. Orient the contractor. 	
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8.1.1.1 CONTRACT ADMINISTRATION PLANNING




Ref.	Steps In Presenting The Topic	Instructor Notes
8-3 to 8-6	<p>a. State the CO's basic responsibility for administering the contract.</p> <p>Ensure that both parties to the contract—the contractor and the Government—comply with all terms and conditions of the contract.</p> <p>b. Explain that planning is necessary to fulfill this responsibility.</p> <p>As a minimum, CO's must track receipt of the deliverable, acceptance, and payment.</p> <p>c. State that one planning issue is whether to delegate authority to an ACO. Define ACO.</p>	
	<p>d. Show VG 8-3: ACO Functions.</p> <p>Ask the class to identify contract administration functions that are NOT typically delegated to ACOs. Answers are marked with an "*" at the left.</p>	

ACO FUNCTIONS

1. Conduct postaward orientation conferences
2. Reduce the scope of work to fit remaining funds "*"
3. Administer security requirements, if any
4. Perform property administration
5. Perform technical surveillance
6. Exercise an option."*"
7. Monitor overall performance to help ensure timely deliveries

VG 8-3

8.1.1.1 CONTRACT ADMINISTRATION PLANNING

Ref.	Steps In Presenting The Topic	Instructor Notes
 	<p>e. Question: “What are the elements of a typical contract administration plan?” [Record answers from the class on a flipchart before providing your own]</p> <p>Potential answers:</p> <ul style="list-style-type: none"> • Title of the contract, related identifiers, and criticality • Identity of the contractor and key contractor personnel • Location of relevant files • Brief description of the work to be performed • Place of performance and/or delivery points • Contract milestones • Tasks to be performed by Government personnel • Identity of the ACO (if any), and the CO's Representatives (CORs) • Tasks and authority delegated to the ACO and CORs <p>f. Define “Contracting Officer Representative” and identify the limits on their authority.</p> <p>CO's typically delegate some of their decision-making authority (e.g., for inspecting and accepting work) <u>in writing</u> to a COR. This delegation of authority will also specify any limits on authority. CORs are also responsible for keeping the CO informed of their decisions and of any problems.</p>	
	<p>g. Question: “Should the CO share any part of the plan with the contractor?” [Solicit answers from the class before providing your own]</p> <p>Answer: Certainly there are parts of the plan that could be shared with the contractor—such as the identity of any inspectors to be stationed in the contractor's facilities. For that purpose, the FAR provides for post-award orientations.</p>	

8.1.1.2 POST-AWARD ORIENTATIONS

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="289 380 370 457" data-label="Image"> </div> <p data-bbox="284 489 365 548">8-6 to 8-7</p>	<p data-bbox="391 380 1130 495">a. Question: “What would be among the reasons for orienting a contractor?” [Solicit answers from the class before providing your own]</p> <p data-bbox="440 512 756 543">Potential answers—To:</p> <ul data-bbox="451 554 1130 894" style="list-style-type: none"> • Introduce the CORs to the contractor's project manager. • Notify the contractor of the limits on the CORs' authority. • Ensure that both parties are aware of their respective tasks, milestones, and responsibilities under the contract—and have the same understanding of all critical dates therein. • Ensure that all parties understand their obligations for keeping the CO informed of progress. <p data-bbox="391 926 1086 963">b. State that CO's can orient the contractor by:</p> <ul data-bbox="451 974 643 1083" style="list-style-type: none"> • Phone, • Letter, or by • Conference. <p data-bbox="391 1125 1130 1205">c. Stress that COs may not use the post-award conference as a forum for modifying the contract.</p>	

8.1.2 ORDERS AGAINST CONTRACTS/AGREEMENTS

Ref.	Steps In Presenting The Topic	Instructor Notes
8-7 to 8-8	<p>a. Present the Setting:</p> <p>“The Government has awarded an indefinite delivery contract.”</p> <p>b. Present the Basic Business Question:</p> <p>“When an indefinite-delivery contract has been established, how are goods and services ordered?”</p> <p>c. State that typical elements of an indefinite delivery contract include:</p> <ul style="list-style-type: none"> • "Per unit" price. • Performance period. • Ordering activities and delivery points. • Maximum or minimum limit (if any) on each order. • Extent of each party's commitment on quantity. 	
FAR §16.506	<p>d. Identify typical elements of a delivery order.</p> <ul style="list-style-type: none"> • Date of order. • Contract number and order number. • Item number and description, quantity, & unit price. • Delivery or performance date. • Place of delivery or performance. • Packaging, packing, & shipping instructions (if any) • Accounting and appropriation data. <p>e. State the basic rules for ordering.</p> <ol style="list-style-type: none"> 1. The CO or authorized ordering officer may place each order as quantities and destinations become known. 2. Individual orders may not exceed contractual limits, and the total quantity may not exceed any maximum amount specified in the contract. 3. Funds must be available. 	
FAR §6.001	<ol style="list-style-type: none"> 4. Competition is not required.* 	

* Indefinite quantity contracts are exempt only when (1) the original contract was placed through full and open competition or (2) the J&A for other than full and open competition adequately covers the order's requirement.

8.1.3 CONSENT TO SUBCONTRACTS

Ref.	Steps In Presenting The Topic	Instructor Notes
8-8 to 8-9	<p>a. Present the Setting:</p> <p>“The contractor has begun work. One of the contractor's first steps in performing the work is to hire subcontractors.”</p> <p>b. Present the Basic Business Question:</p> <p>“Should you consent to proposed subcontracts?”</p> <p>c. Lead the class through FAR 52.244-1 Subcontracts (Fixed-Price Contracts), noting that:</p> <ol style="list-style-type: none"> 1. Generally, the COs do not have any right of consent under Firm-Fixed Price or Fixed Price with Economic Price Adjustment types of contracts (see ¶(a) of the clause). 2. These clauses do not require prior consent for <u>all</u> subcontracts that the prime intends to award (see ¶(b) of the clause). <p>d. Identify typical factors considered by COs in deciding whether to grant or withhold consent. Among such factors:</p> <ul style="list-style-type: none"> • The propriety of the proposed subcontract (e.g., not being made to a firm on the excluded list) • Reasonableness of prices being paid. • The process for placing subcontracts, in terms of such issues as subcontractor responsibility, small business participation, competition requirements, and other FAR requirements. <p>e. Show VG 8-4: EXCERPTS FROM FAR 52.244-1 ON SUBCONTRACTING.</p>	



VG 8-4 FAR 52.244-1 SUBCONTRACTS (FIXED-PRICE CONTRACTS)

* * * * *

(a) This clause does not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting from unpriced modifications to such contracts.

(b) . . . The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract—

- (1) Is proposed to exceed \$100,000; or
- (2) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services, that in the aggregate are expected to exceed \$100,000.


* * * * *

(d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (b) above. . . .

* * * * *


(End of clause)

8.2.1 MONITORING AND PROBLEM SOLVING


Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 8-5: Quality Assurance.	

Start-Up	Quality Assurance	Payment and Accounting	Closeout
	Monitoring and Problem Solving Monitoring, Inspection, and Acceptance Delays Stop Work Remedies Property Property Administration Reporting Performance Problems Fraud and Exclusion		

VG 8-4

8-10 to 8-15	b. Present the Setting: “Work is proceeding under the contract.” c. Present the Basic Business Question: “How can you detect problems with the contract, what remedies are available, and how should the problems be resolved?”	
	d. Question: “Who inspects and accepts deliverables?” [Solicit answers from the class before providing your own] Answer: Generally, a COR. For many contracts, inspection and acceptance is performed by the requiring activity. In other cases, the Government employs full-time inspectors.	

8.2.1 MONITORING AND PROBLEM SOLVING

Ref.	Steps In Presenting The Topic	Instructor Notes
	e. Show VG 8-6 and lead the class through excerpts from the Inspection clause for Fixed Price Supplies (FAR 52.246-2).	

VG 8-6 FAR 52.246-2 INSPECTION OF SUPPLIES—FIXED-PRICE


* * * * *

(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. . . .


* * * * *

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

* * * * *

	<p>f. Question: “What is the CO's responsibility for inspecting and accepting the deliverables?” [Solicit answers from the class before providing your own]</p> <p>Answer: The CO has overall responsibility for the goal of obtaining deliverables from contractors that fully comply with the Schedule and all other terms and conditions of the contract. Given this responsibility, CO's must be on the alert for any potential or actual problems which threaten that goal.</p>	
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8.2.1 MONITORING AND PROBLEM SOLVING

Ref.	Steps In Presenting The Topic	Instructor Notes
Page 8-12	<p>g. Lead the class through Exhibit 8-8, STEPS IN RESOLVING PERFORMANCE PROBLEMS:</p> <ul style="list-style-type: none"> • Verify evidence and document the problem • Determine the potential impact on cost, delivery, and other requirements • Determine whether the delay (if any) is excusable or whether the Government is otherwise at fault to any extent • Where necessary, stop work in process while the problem is being resolved • Seek an informal resolution of the problem • Where necessary, invoke any applicable contractual remedy (e.g., rejection of work, liquidated damages, invocation of a warranty, or issuance of a cure or show cause notice) • Modify the contract when and as necessary to resolve the problem • As a last resort, terminate the contract • Keep all interested parties informed of the contract status and document the file 	
	<p>h. Show VG 8-7 and define excusable delay per the Default clause.</p>	

VG 8-7 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE).


* * * * *

(c) . . . the Contractor shall not be liable . . . if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

- (1) acts of God or of the public enemy,
- (2) acts of the Government in either its sovereign or contractual capacity,
- (3) fires,
- (4) floods,
- (5) epidemics,
- (6) quarantine restrictions,
- (7) strikes,
- (8) freight embargoes, and
- (9) unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

8.2.1 MONITORING AND PROBLEM SOLVING

Ref.	Steps In Presenting The Topic	Instructor Notes
	i. Show VG 8-8 and walk the class through excerpts from FAR clauses related to stop work orders. Stress that, at times, the contracting officer may need to stop work while working out a problem.	

VG 8-8 52.212-13 STOP-WORK ORDER.

* * * * *

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause.


* * * * *

(b) . . . The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment

* * * * *

8.2.1 MONITORING AND PROBLEM SOLVING

Ref.	Steps In Presenting The Topic	Instructor Notes
	j. Ask the class to turn to Exhibit 8-10 on page 8-15. Show VG's 8-9 through 8-13 and walk the class through excerpts from the FAR clauses related to the remedies in that Exhibit.	

VG 8-9 LIQUIDATED DAMAGES

52.212-4 LIQUIDATED DAMAGES—SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT.

* * * * *

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension, the Contractor shall, in place of actual damages, pay to the Government . . . for each calendar day of delay the sum of [Contracting Officer insert amount].

* * * * *

VG 8-10 REJECTION OF WORK PRIOR TO ACCEPTANCE

52.246-2 INSPECTION OF SUPPLIES—FIXED-PRICE

* * * * *

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

* * * * *

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies . . . , the Government may either

- (1) . . . remove, replace, or correct the supplies and charge the cost to the Contractor or
- (2) terminate the contract for default.

* * * * *

VG 8-11 REJECTION OF WORK AFTER ACCEPTANCE

52.246-2 INSPECTION OF SUPPLIES—FIXED-PRICE

* * * * *

(k) Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government . . . shall have the right to require the Contractor

- (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies . . . or
- (2) . . . repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. . . .

* * * * *

(End of clause)

VG 8-12 WARRANTY RIGHTS

52.246-17 WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE.

* * * * *

(b) *Contractor's obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, . . . the Contractor warrants that for [X period of time after delivery . . .]—(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract

* * * * *

(c) *Remedies available to the Government.* . . . (2) Within a reasonable time after . . . [providing written notice to the Contractor of any breach of warranties], the Contracting Officer may either—

- (i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof . . . ; or
- (ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.

* * * * *

VG 8-13 CURE NOTICE & TERMINATION FOR DEFAULT

52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE).

* * * * *


(a)(1) The Government may . . . by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

* * * * *

8.2.2 PROPERTY

Ref.	Steps In Presenting The Topic	Instructor Notes
8-16	 <p>a. Present the Setting: “The Government has furnished property to the contractor for the work.”</p> <p>b. Present the Basic Business Question: “If property has been furnished to the contractor, how can you ensure that it will be used properly and returned whole to the Government?”</p> <p>c. Show VG 8-14 and lead the class through the clause at FAR 52.245-2 Government Property (Fixed-Price Contracts). In doing so, stress—</p> <ul style="list-style-type: none"> • The Government's responsibility for furnishing the property on time and in suitable condition. • The contractor's responsibility for protecting, and preserving, and properly using the property. • The contractor's potential liability for damages. 	

VGs 8-14 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS).

* * * * *

(a) *Government-furnished property.* . . .

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished “as is”) will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract’s delivery or performance dates.

* * * * *

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.


(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract . . .

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.



* * * * *

(g) *Risk of loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor


8.2.2 PROPERTY

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Question: “Who generally monitors the contractor's use of Government-furnished property” [Solicit answers from the class before providing your own]</p> <p>Answer: Generally, a Government property specialist (administrator).</p>	

8.2.3 REPORTING PERFORMANCE PROBLEMS

Ref.	Steps In Presenting The Topic	Instructor Notes
8-17 to 8-18	<p>a. Present the Setting: “The contractor is behind schedule and inspectors are rejecting as many items as they are accepting.”</p> <p>b. Present the Basic Business Question: “Should you report poor performance for potential suspension or debarment?”</p> <p> c. Question: “What types of performance problems should be reported to debarring officials ?” [Solicit answers from the class before providing your own]</p> <p> Among potential answers.</p> <ul style="list-style-type: none"> • Repeated late deliveries • Repeated rejections of work • Work of marginal quality • Violation of the Drug-Free Workplace Act • Evidence of fraud or misconduct. <p>d. Describe the debarring official's options upon receiving such reports on a given firm.</p> <ul style="list-style-type: none"> • Suspension, generally for up to twelve months • Debarment, generally for up to three years • Ineligibility, for which reason the firm will continue to be excluded until it corrects the problem. 	

8.3.1 PAYMENT

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 8-15 : Payment and Accounting	

Start-Up	Quality Assurance	Payment and Accounting	Closeout
		Payment Limitation of Costs Invoices Unallowable Costs Assignment of Claims Collecting Contractor Debts Progress Payments Price and Fee Adjustments Accounting Accounting and Cost Estimating Systems Cost Accounting Standards Defective Pricing	

VG 8-15

	b. Show VG 8-16.	
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VG 8-16 SETTING FOR TOPIC 8.3.1: PAYMENT

“The contractor--CLEANCO-- signed a Fixed Price Contract with Economic Price Adjustment. Under that contract, CLEANCO has submitted a request for progress payments, along with an invoice for costs incurred during the prior month of work under the contract. The total amount of the invoice is \$145,000, an amount equal to 100% of incurred costs. Among the invoiced items is \$35,000 for a company car--a new Jaguar (\$35,000 being the sticker price).




“One day after submitting the invoice, a CLEANCO representative phoned the contracting officer to request payment directly to CLEANCO's bank. The CLEANCO representative also complained bitterly that CLEANCO's costs are going to greatly exceed the negotiated fixed price.

“Later on that same day:

1. An IRS auditor notified the Contracting Officer that CLEANCO owes the Government \$20,000 in back taxes.
2. The Contracting Officer received a phone call from J.P. Tool and Die, one of CLEANCO's suppliers. The President of J.P. Tool and Die complained that CLEANCO is 3 months delinquent in paying a bill of \$30,000 for parts that are being used in the deliverable.”

c. Present the Basic Business Question: “What is owed to the contractor, and when and how should payment be made?”
--

8.3.1.1 LIMITATION OF COSTS

Ref.	Steps In Presenting The Topic	Instructor Notes
 8-20	<p>a. Tell the class: “Let's begin with CLEANCO's complaint that its costs are likely to greatly exceed the negotiated fixed price.”</p> <p>Question: “Is the potential cost overrun our problem or CLEANCO's problem?” [Solicit answers from the class before providing your own]</p> <p>Answer: CLEANCO's—since it signed a Fixed Price contract. However, when a contractor experiences a cost overrun on a fixed price contract, be alert for unsatisfactory performance and/or potential default.</p>	
	<p>b. Question: “Had the contract with CLEANCO been cost reimbursement , would the potential cost overrun be of more concern to the Government?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes. For that reason, cost reimbursement contracts contain a clause limiting the Government's liability for cost overruns.</p>	
	<p>c. Show VG 8-17 and walk the class through the FAR clause on limitation of costs.</p>	

VG 8-17 52.232-20 LIMITATION OF COST (COST REIMBURSEMENT CONTRACTS).

* * * * *

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

- (1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or
- (2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.



* * * * *

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

- (1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule and
- (2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract.

* * * * *





8.3.1.1 LIMITATION OF COSTS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Inform the class that there is parallel language in FAR 52.232-7, <u>Payments under Time-and-Materials and Labor-Hour Contracts</u>. Under that clause:</p> <ul style="list-style-type: none"> • The Government is not obligated to pay more than the ceiling price in the contract • The contractor is not obligated to continue performance if to do so would exceed the ceiling price. • The contractor must notify the CO when it is within 30 days of expending 85% of the ceiling price. 	
	<p>e. Question: “If, under a cost reimbursement contract, the contractor can't complete the contract within the estimated cost in the Schedule, what are the CO's options?” [Solicit answers from the class before providing your own]</p> <p>Answer:</p> <ul style="list-style-type: none"> • Reduce the scope of work • Let the contractor proceed under the current SOW and funding until the contract expires, and obtain whatever the contractor has done to that point • Obtain additional funds and modify the contract to increase the Schedule's estimated cost 	
	<p>f. Question: “The CLEANCO contract, being fixed price, has no limitation of costs clause. Given that fact, how should the Contracting Officer answer CLEANCO's complaint that it faces a cost overrun?” [Solicit answers from the class before providing your own]</p> <p>Answer: If CLEANCO's costs are rising because of inflation in labor rates or materials prices, the economic price adjustment terms of the contract may provide some measure of relief.</p> <p>On the other hand, the CO should remind CLEANCO that it has a duty to provide an acceptable deliverable within the fixed price (as adjusted per the EPA and other clauses).</p>	


8.3.1.2 INVOICES

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define invoice.</p> <p style="padding-left: 40px;">A bill that the contractor sends the Government.</p> <p>b. List elements required by the Prompt Payment Clause (FAR 52.232-25).</p> <ul style="list-style-type: none"> • Name and address of the Contractor. • Invoice date. • Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number). • Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed. • Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). • Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment). • Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice. • Any other information or documentation required by other requirements of the contract (such as evidence of shipment). <p>c. Describe the requirement of the Prompt Pay Act—</p> <p style="padding-left: 40px;">The Government is obliged to pay its bills promptly to avoid paying interest to the contractor.</p>	

8.3.1.2 INVOICES

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Inform the class that the Government might not have to pay interest if:</p> <ul style="list-style-type: none"> • The contractor failed to sent the invoice to the designated billing office. • The invoice is defective, lacking one or more of the elements required by FAR 52.232-25 (provided that the CO notifies the contractor of the defect within the time limits in the clause—generally 7 days). • In the case of a final invoice for any balance of funds due the Contractor, the amount is subject to further contract settlement actions between the Government and the Contractor. • There are disagreements over the payment amount or other issues involving contract compliance (e.g., with quality, quantity, or other such requirements). • The CO temporarily withholds or retains part of the invoiced amount in accordance with the terms of the contract. 	
	<p>e. Question: “Why might the CO not pay an invoice in full?” Record answers from the class on a flipchart before providing your own]</p>	
	<p>Potential Answers (among others):</p> <ul style="list-style-type: none"> • To take discounts for early payment • To resolve discrepancies between invoiced prices and the prices established in the contract • To avoid paying for items that the Government has not received or accepted • To reimburse costs at the rate established in the progress payments clause • To avoid paying for unallowable costs 	
	<p>TRANSITION—Tell the class: “What about the \$35,000 for the Jaguar. Is that cost allowable? Before answering that question, let's examine the meaning of allowability.”</p>	

8.3.1.3 UNALLOWABLE COSTS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define allowable cost.</p> <p>A cost incurred by the contractor that the Government is contractually obligated to reimburse.</p>	
	<p>b. Show VG 8-18 and 8-18a: Factors in Determining Allowability.</p>	

FACTORS IN DETERMINING ALLOWABILITY

Factor	Question	Example
Reasonableness	Is the cost reasonable -- is it what would have been incurred by a prudent person in the conduct of competitive business?	Is the contractor billing the Gov't for rent on unoccupied, unneeded space?
Allocability	Is the Gov't paying its fair share of indirect costs for work under the contract?	Is the Gov't being charged for 100% of the shop foreman's salary, when in fact the shop foreman also supervised work under five other contracts during the billing period?
Accounting Principles	Is the cost properly charged to the Gov't under the Gov't CAS, or generally accepted accounting principles?	Per the "consistency" principle, has the contractor consistently included the costs of tooling in its manufacturing overhead pool from one billing period to the next?

VG 8-18

FACTORS IN DETERMINING ALLOWABILITY

Factor	Question	Example
Terms of Contract	May the invoiced cost be paid under the contract's terms and conditions?	The Gov't might not have to reimburse the contractor for costs in excess of the total estimated cost in the schedule for a cost reimbursable contract.
Limitations in FAR Part 31	Is the Gov't prohibited by Part 31 from paying the cost as invoiced?	The Gov't is prohibited by FAR 31.205-41 from paying for the costs of alcoholic beverages.

VG 8-18a

8.3.1.3 UNALLOWABLE COSTS



c. **Question:** “When is allowability an issue?”
[Solicit answers from the class before providing your own]

Answer: Whenever the contract provides for payment on the basis of incurred costs. Examples—

1. All cost reimbursement contracts.
2. Fixed Price Incentive and Redeterminable contracts, since the final prices for those contracts are based on incurred costs.
3. Progress payments under firm fixed price contracts and fixed price contracts with economic price adjustments.



d. Show VG 8-19 and lead the class through language of the Progress Payments clause related to allowability.

VG 8-19 EXCERPTS FROM FAR 52.232-16 RELATED TO ALLOWABILITY

52.232-16 PROGRESS PAYMENTS.

* * * * *

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as ... 80 percent* of the Contractor's cumulative total costs under this contract ... less the sum of all previous progress payments made by the Government under this contract....

(2) The following conditions apply. . . :

- (i) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.
- (ii) Costs for the following may be included when incurred.
....:
 - (B) Direct labor, direct travel, and other direct in-house costs.
 - (C) Properly allocable and allowable indirect costs.




* * * * *

(3) The Contractor shall not include the following in [their invoices for progress payments] . . . Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

* * * * *

*85% percent under Alternate I for small business concerns.


8.3.1.3 UNALLOWABLE COSTS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. Question: “Let's revisit the \$35,000 for the Jaguar. Is that cost allowable under the Progress Payments clause?” [Solicit answers from the class before providing your own]</p> <p>Answer: No. It is neither reasonable nor properly allocable in full to this contract.</p>	
	<p>f. Question: “After CLEANCO's product has been installed and accepted, the Government will pay CLEANCO a fixed price of \$9,300,000. Could CLEANCO use that money to pay for a Jaguar?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes, as far as the terms and conditions of the contract are concerned.</p> <p>In Firm Fixed Price or Fixed Price with Economic Price Adjustment contracts, the Government ultimately pays the fixed price without regard to the allowability of individual elements of cost.</p> <p>TRANSITION—Tell the class that “However, we have not yet received or accepted CLEANCO's product. Rather, CLEANCO has requested progress payments for costs incurred during the prior month of work . What is the dollar amount of the progress payment to which CLEANCO is entitled?”</p>	
	<p>Using the flipchart, record the following figures:</p> <p> Invoiced amount: \$145,000</p> <p> Less the cost of the Jaguar (\$35,000) = \$110,000.</p> <p> Less 20% (\$22,000) = \$88,000</p>	



8.3.1.4 ASSIGNMENT OF CLAIMS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. State that “\$88,000 is what we owe CLEANCO under the Progress Payments clause. However, we are not yet ready to write CLEANCO a check. The first question is to whom the check would be made out—to CLEANCO or to CLEANCO's bank. CLEANCO has requested what is known as an assignment of claims.”</p>	
8-24	<p>b. Define “assignment of claims”</p> <p>The Government makes contract payments directly to the financial institution that has loaned money to the contractor.</p>	
<div data-bbox="144 871 225 951" data-label="Image"> </div>	<p>c. Question: “Why would CLEANCO wish to assign payments to a bank? [Solicit answers from the class before providing your own]</p> <p>Answer: To obtain the loan. Under the Assignment of Claims Act of 1940, a contractor is permitted to use its right to be paid by the Government for contract performance as security for a bank loan.</p> <p>d. Identify some of the things that the CO must verify before permitting CLEANCO to assign payments.</p> <p>Among other things, the CO must verify that the:</p> <ul style="list-style-type: none"> • Contract has been properly approved and executed • Contract permits assignment of claims • Assignment covers only money due or that will become due under the contract • The assignment is to a bank, trust company, or other financing agency • The assignment has been properly executed <p>TRANSITION—State that, unfortunately for CLEANCO, the CLEANCO contract contains the clause at FAR 52.232-24, Prohibition of Assignment of Claims. Consequently, the check for the \$88,000 must be made out to CLEANCO.</p>	

8.3.1.5 COLLECTING CONTRACTOR DEBTS

Ref.	Steps In Presenting The Topic	Instructor Notes
8-25	<p>a. However, before the financial officer writes the check, the CO must first consider the \$20,000 owed by CLEANCO to the IRS.</p> <p>[Note to instructor—Had there been an assignment of claims, the Government would not have been able to “set-off” the taxes against payments under the contract—assignees are protected from such setoffs.]</p> <p>b. Describe circumstances under which contractors might owe money to the Government.</p> <ul style="list-style-type: none"> • Unpaid, back taxes. • Assessment of liquidated damages. • Damages or excess costs related to defaults (e.g., re-procurement costs). • Overpayments, as when a contractor bills for 1,000 units but only shipped 900. • Government expenses for correcting defects in supplies furnished by the contractor. <p>c. Present 3 methods for collecting debts:</p> <ul style="list-style-type: none"> • "Set-offs" against the contractor's next invoice(s). • Cash payments from the contractor, either for the full amount or on a deferred payment schedule. • Applying tax credits that are due to the contractor to the debt. <p>TRANSITION—Inform the class that, per instructions from the IRS, the finance office has set-off the debt of \$20,000.</p>	
	 <p>On the flipchart, subtract \$20,000 from the sum of \$88,000 to show a new total of \$68,000.</p> <p>State that, before the Government writes a check for \$68,000, there is the matter of the complaint from J.P. Tool and Die. CLEANCO apparently is 3 months delinquent in paying a bill of \$30,000 for parts that are being used in the deliverable.</p> <p>That might be grounds to suspend progress payments!</p>	

8.3.1.6 PROGRESS PAYMENTS

Ref.	Steps In Presenting The Topic	Instructor Notes
8-26 to 8-27	<p>a. Describe the process of making and liquidating progress payments.</p> <p>As already indicated, the Progress Payments clause authorizes the CO to reimburse contractors for incurred costs.</p> <p>Upon acceptance of the deliverable, the contractor submits a final invoice for the fixed price in the contract.</p> <p>Before paying the fixed price, the CO subtracts the dollar amount of prior progress payments. This is known as “liquidating” the progress payments.</p>	
	<p>b. Question: “Why should COs monitor the making and liquidation of progress payments?” [Solicit answers from the class before providing your own]</p> <p>Answer: To protect the Government from the risks inherent in providing up-front money to a contractor. For instance, there is always the risk that the contractor will go bankrupt before the Government sees the first deliverable. It may be impossible, in that case, to recover the progress payments—money down the drain.</p> <p>Hence, the Progress Payments clause authorizes the CO to suspend or reduce progress payments.</p>	
	<p>c. Show VG 8-20 and walk the class through language in the Progress Payments Clause on reducing or suspending payments.</p>	

VG 8-20 EXCERPTS FROM FAR 52.232-16 RELATED TO REDUCING OR SUSPENDING PAYMENTS

52.232-16 PROGRESS PAYMENTS.



* * * * *

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

- (1) The Contractor failed to comply with any material requirement of this contract
- (2) Performance of this contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.
- (3) Inventory allocated to this contract substantially exceeds reasonable requirements.
- (4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.
- (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

* * * * *

8.3.1.6 PROGRESS PAYMENTS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Question: “Would CLEANCO's failure to pay its suppliers represent a potential grounds for reducing or suspending progress payments?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes.</p> <p>TRANSITION—Inform the class that the Contracting Officer has advised CLEANCO to pay its bills or face suspension of progress payments under FAR 52.232-16(c)(4).</p> <p> Return to the flipchart and state that, finally, the CO has authorized the finance office to cut a check for \$68,000 to CLEANCO.</p> <p>As the contract winds down, there is yet one last payment issue to consider—what is the final price that the Government will owe CLEANCO?</p>	

8.3.1.7 PRICE AND FEE ADJUSTMENT

Ref.	Steps In Presenting The Topic	Instructor Notes
8-27	<p>a. Describe the impact of an Economic Price Adjustment clause on the final price of the CLEANCO contract.</p> <p style="padding-left: 40px;">The price may be adjusted upwards or downwards based on changes in the prices of labor and materials required for performance of the contract.</p> <p>b. Present other types of adjustments that might be made to the fee or price of a contract.</p> <ul style="list-style-type: none"> • Addition of an "award fee" to the base fee of a cost plus award fee contract • Establishment of the final price of a fixed-price incentive contract • Establishment of the final fee of a cost plus incentive fee contract • Prospective or retroactive redetermination of the negotiated price under a price redetermination contract <p>c. State that the contractor generally has the burden of proposing and justifying the amount that the fee or price should be adjusted.</p>	

8.3.1 PAYMENT

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>Recap of the Question for Section 8.3.1: “What is owed to the contractor, and when and how should payment be made?”</p> <p>Answer: CLEANCO requested a payment under the Progress Payments clause in the amount of \$145,000. The Contracting Officer:</p> <ol style="list-style-type: none"> 1. Advised CLEANCO that any cost overrun is CLEANCO's responsibility—that CLEANCO must deliver an acceptable product within the fixed price of the contract. 2. Deducted \$35,000 for the cost of the Jaguar. 3. Deducted \$22,000 because of the cap of 80% on the reimbursement of incurred costs. 4. Deducted another \$20,000 from the invoice to collect the amount owed by CLEANCO to the Government for back taxes. 5. Instructed the finance office to cut a check for \$68,000 payable to CLEANCO. 6. Refused the request to assign claims to CLEANCO's bank. 7. Advised CLEANCO to pay its bills or face suspension of progress payments. 8. Is waiting for notice from CLEANCO before making any adjustments in the price of the contract based on the contract's economic price adjustment terms and conditions. 	

8.3.2 ACCOUNTING/DEFECTIVE PRICING

Ref.	Steps In Presenting The Topic	Instructor Notes
8-28 to 8-31	<p>a. Present the Setting: “The Government is periodically reimbursing a contractor for incurred costs.”</p> <p>b. Present the Basic Business Question: “Has the Government been adversely impacted by flaws in the contractor's estimating and accounting of costs and if so, how can restitution be made?”</p> <p>c. Identify the situations under which contractors track incurred costs as a basis for payment.</p> <ul style="list-style-type: none"> • All cost type contracts. • Fixed Price Incentive contracts. • Fixed Price Redeterminable contracts. • Any other type of contract when the Government provides financing in the form of progress or advance payments. <p>d. Describe the contractor's obligation to maintain an adequate accounting system.</p> <p>Whenever a contract requires the contractor to furnish data on incurred costs, the contract also requires the contractor to maintain an adequate accounting system and open its books to the Government.</p> <p>e. State that, in some cases, the contractor's books and accounting system must comply with Cost Accounting Standards.</p> <p>In such cases, the contractors are required to disclose their accounting practices . If the Government finds that those practices do not conform to the Standards, the contractor must:</p> <ol style="list-style-type: none"> 1. Change its accounting system. 2. Renegotiate the prices of contracts affected by the changes in the firm's accounting practices. <p>f. Stress that relatively few contracts in nondefense agencies are subject to CAS.</p>	

8.3.2 ACCOUNTING/DEFECTIVE PRICING


Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>g. State that the Truth in Negotiations Act provides another basis for revisiting prices.</p> <p>Here, the issue is whether the CO, when negotiating the original price of the contract, had relied on certified cost and pricing data that in fact were not accurate, not complete, or not current.</p> <p>If the CO had, as a result, agreed to a higher price than warranted, the Government is entitled to a commensurate reduction in the contract price and interest on the amount of any overpayment.</p>	

8.4 CLOSEOUT

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 8-21 : Closeout	

Start-Up	Quality Assurance	Payment and Accounting	Closeout
			Closeout Closeout

VG 8-21

8-31 to 8-32	b. Present the Setting: “The contractor has completed the work.” c. Present the Basic Business Question: “How do you closeout the contract?”	
	d. Show VG 8-22 and 8-22a: Eight Steps to Contract Closeout. Explain that a comprehensive listing of closeout requirements, as well as time standards for completing closeout, appears in FAR Subpart 4.8. Have the students follow along by looking at Exhibit 8-15 on page 8-32 of the text reference.	

EIGHT STEPS TO CONTRACT CLOSEOUT

1. Verify that the contract is physically complete
2. Obtain forms, reports, and clearances
3. Verify that the Government and the contractor have satisfied other terms and conditions for closeout
4. Settle any outstanding issues
5. Verify that there are no outstanding claims or disputes
6. Make final payment and de-obligate any remaining funds
7. Prepare a contract completion statement and, based on the retention schedule in FAR 4.805, provide for the disposal of files
8. Determine whether to invoke phase-in/phase-out rights when "Continuity of Services" are required

VG 8-22 & 8-22a

RECAP OF LESSON 8

a. Show VG 8-23 and leave it in view during the recap.

Start-Up	Quality Assurance	Payment and Accounting	Closeout
Planning Contract Administration Planning Post-Award Orientations Ordering Ordering Against Contracts/Agreements Subcontracting Consent to Subcontracts	Monitoring and Problem Solving Monitoring, Inspection, and Acceptance Delays Stop Work Remedies Property Property Administration Reporting Performance Problems Fraud and Exclusion	Payment Limitation of Costs Invoices Unallowable Costs Assignment of Claims Collecting Contractor Debts Progress Payments Price and Fee Adjustments Accounting Accounting and Cost Estimating Systems Cost Accounting Standards Defective Pricing	Closeout Closeout

VG 8-23

b. Recap the Business Questions that were addressed in Lesson 8.

LESSON 8 BASIC BUSINESS QUESTIONS

8.1.1 Planning—What are the critical post-award tasks and milestones, who should be responsible for each task and milestone, and should you provide an orientation to CORs and the contractor on their respective tasks and responsibilities under the contract?

8.1.2 Ordering—When an indefinite-delivery contract has been established, how are goods and services ordered?

8.1.3 Subcontracting—Should you consent to proposed subcontracts?

8.2.1 Monitoring, Inspection, and Acceptance—How can you detect problems with the contract, what remedies are available, and how should the problems be resolved?

8.2.2 Property—If property has been furnished to the contractor, how can you ensure that it will be used properly and returned whole to the Government?

8.2.3 Reporting Performance Problems—Should you report poor performance for potential suspension or debarment?

8.3.1 Payment—What is owed to the contractor, and when and how should payment be made?

8.3.2 Accounting and Defective Pricing—Has the Government been adversely impacted by flaws in the contractor's estimating and accounting of costs and if so, how can restitution be made?

8.4.1 Closeout—How do you closeout the contract?

LESSON 9

MODIFICATIONS, TERMINATIONS, AND CLAIMS

Modifications, Terminations, and Claims

TOPIC: MODIFICATIONS, TERMINATIONS, AND CLAIMS

Ref: Chapter 9


Objective: When you finish this introduction, your students must be able to:

- List and describe duties related to contract modifications.
- List and describe duties related to termination.
- List specialized areas.

Time: Break before. Resume at: 2:20 PM — 40 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Show VG 9-1: Modifications, Terminations, and Claims.</p> <p>Restate the related business questions (see below).</p>	

Functions*

Related Business Questions

Contract Modification

9.1 Should you modify the contract, and, if so, how?

Termination

9.2 Should you terminate the contract, and, if so, how?

Claims


9.3 How should you respond to the contractor's claim?

Specialized Areas

9.4 What are the specialized areas of acquisition?

*(From VG 9-1)

CONTRACT MODIFICATION

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 9-2 : Contract Modification.	


Contract Modification	Termination	Claims	Specialized Areas
Modifications/ Options Contract Modifications Exercising Options			

VG 9-2

9-3 to
9-5

- b. Present the Setting:
- “A contract has been awarded. However, the requiring activity now decides that it needs 100 more units. Also, the contractor has proposed zinc coating the units to increase their rust resistance and thereby extend the life of the units by 3 to 5 years.”
- c. Present the Basic Business Question:
- “Should you modify the contract, and, if so, how?”
- d. Define “contract modification.”
- Any written change in the terms of a contract. Modifications can be either unilateral or bilateral.
- e. Distinguish unilateral from bilateral modifications.
- Unilateral modifications are issued by the CO and signed only by the CO
 - Bilateral modifications are negotiated and signed by both the CO and the contractor

CONTRACT MODIFICATION

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Identify clauses that provide for unilateral modifications.</p> <p>Among others:</p> <ul style="list-style-type: none"> • Government Property Clause • Option for Increased Quantity Clause • Changes Clause <p> g. Show VG 9-3 (52.243-1 CHANGES—FIXED-PRICE) and walk the class through the changes clause.</p>	

VG 9-3 52.243-1 CHANGES—FIXED-PRICE

* * * * *

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:




- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.


* * * * *

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

CONTRACT MODIFICATION

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>h. Question: “Why modify a contract bilaterally when the changes clause permits you to proceed unilaterally?” [Solicit answers from the class before providing your own]</p> <p>Answers: Bilateral modifications are useful when—</p> <ul style="list-style-type: none"> • Modifying terms of a contract that may not be unilaterally changed under the changes or other clauses • It is possible to negotiate and reach agreement on the equitable adjustment prior to making the change • Incorporating the equitable adjustment into the contract following the issuance of a change order <p>i. Stress that neither bilateral nor unilateral modifications may ordinarily change the scope of a contract.</p>	
	<p>j. Question: “Would adding 100 additional units to the contract be considered a change in scope?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes. Unless there is justification for procuring the additional 100 units without competition, the contract may not be modified to add the units.</p>	
	<p>k. Question: “Would adding a requirement for zinc coating be considered a change in scope?” [Solicit answers from the class before providing your own]</p> <p>Answer: Probably not. A bilateral modification may be possible to zinc coat the units—if extending unit life would be worth the additional cost of the coating. The change might also be made unilaterally under the changes clause—if the units are being specially manufactured for the Government and the change would be to the Government furnished specifications.</p>	

9.2 TERMINATION

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 9-4 : Termination.	

Contract Modification	Termination	Claims	Specialized Areas
	Termination Termination A. Determine whether to terminate for convenience or default. B. Terminating for convenience. C. Terminating for default. Bonds		

VG 9-4

9-5 to
9-8


b. Present the Setting:

“Halfway through installation of new heating equipment, the attic floor collapsed. The COR blames the collapse on shoddy workmanship by the heating and cooling contractor. Moreover, COR, representing the requiring activity, reports that the Government no longer needs the heating equipment—having decided to warehouse goods instead of people in the building. The requiring activity wants its money back, and the COR wants the contractor off the site for good.”

c. Present the Basic Business Question:

“Should you terminate the contract, and, if so, how?”

9.2 TERMINATION

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. State the two basic reasons for terminating a contract:</p> <ol style="list-style-type: none"> 1. The Government's need has substantially changed. 2. The contractor has failed, or is failing, to perform as required by the contract. <p>e. State that, when the needs of the Government have changed, the CO may choose to terminate the contract for convenience.</p>	
	f. Show VG 9-5 and walk the class through FAR 249-2, Termination for Convenience of the Gov't (Fixed Price).	

VG 9-5 FAR 52.249-2: TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE)

(a) The Government may terminate performance of work under this contract ... if the Contracting Officer determines that a termination is in the Government's interest. ...

* * * * *

(d)-(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer. ... [If the Contractor and the Contracting Officer agree on the amount to be paid because of the termination], the contract shall be amended, and the Contractor paid the agreed amount. ...

(f) If the Contractor and the Contracting Officer fail to agree . . . , the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows ... (1) The contract price for completed supplies or services accepted by the Government ... [and] (2) The total of--


- (i) The costs incurred in the performance of the work terminated...;
- (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts ...; and
- (iii) A [reasonable] ...profit on subdivision (i) above ...

* * * * *

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under [¶f, among others]...

* * * * *

9.2 TERMINATION

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>g. State that, if the contractor is failing to perform, then the CO may exercise the Government's right to terminate the work, per the "Termination for Default" clause.</p> <p>h. Show VG 9-6 and walk the class through FAR 249-8, Default (Fixed-Price Supply and Service).</p>	

VG 9-6 FAR 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)

(a)(1) The Government may ... by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract . . . ; or
- (iii) Perform any of the other provisions of this contract ...

* * * * *

(b) If the Government terminates this contract in whole or in part, it may acquire . . . supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) ... the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor...

* * * * *

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

9.2 TERMINATION


Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="142 348 224 428" data-label="Image"> </div>	<p data-bbox="245 348 966 506">i. Question: “Should the heating equipment contract be terminated for convenience or for default?” [Solicit answers from the class before providing your own]</p> <p data-bbox="295 522 971 600">Case for Convenience (see the next page for the case for default)</p> <ol data-bbox="306 611 976 1339" style="list-style-type: none"> <li data-bbox="306 611 976 848">1. The real reason for terminating the contract is that the Government's need has changed, not because of any failing on the part of the contractor. The requiring activity simply does not need the equipment anymore. <li data-bbox="306 856 976 1129">2. The requiring activity blames the attic floor's collapse on the contractor. However, one of the issues is whether the Government is culpable in part for the collapse—e.g., if the condition of the building was not as represented by the Government. <li data-bbox="306 1138 976 1339">3. Even if the CO terminates for convenience, the Government would still be able to recover the cost of repairing the building—to the extent that the contractor is in fact responsible for the damage. 	

9.2 TERMINATION


Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>Case for Default.</p> <ol style="list-style-type: none"> 1. So what if the requiring activity no longer needs the equipment. “The fact that the Government no longer needs an item has been frequently rejected as a basis for overturning an otherwise proper default termination.”¹ 2. Absent an attic floor, the contractor cannot possibly meet its obligation to install acceptable equipment by the date promised in the contract. 3. The only real issue is whether the failure to perform arises from causes beyond the control and without the fault or negligence of the contractor. If the contractor can make a case that the default was excusable, then the termination would be converted to convenience. 4. The first step in terminating for default would be a cure notice. The cure notice would afford the contractor an opportunity to present its side of the story prior to default. 	

¹Cibinic and Nash, “Administration of Government Contracts,” (2nd edition, 1985), page 745.

9.2 TERMINATION


Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>j. Question: “If the contractor had been bonded, what would the role of the surety have been in any termination for default ?” [Solicit answers from the class before providing your own]</p> <p>Answer: The CO would have given the surety the choice of (1) arranging for performance or (2) allowing the Government to re-procure at the surety's expense, to the extent the surety is liable for re-procurement costs.</p>	

9.3 CLAIMS

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 9-7: Claims.	

Contract Modification	Termination	Claims	Specialized Areas
		Claims Claims	

VG 9-7

9-9 to 9-10	<p>b. Present the Setting:</p> <p>“The contractor blames the Government for collapse of the attic floor and has filed a claim for damage to its tools and supplies.”</p> <p>c. Present the Basic Business Question:</p> <p>“How should you respond to the contractor's claim?”</p> <p>d. Define “claim.”</p> <p>A written demand or written assertion by a party to the contract that it is entitled to:</p> <ul style="list-style-type: none"> • Additional money “in a sum certain” • Adjustment or interpretation of contract terms • Other relief arising under or related to the contract 	
	e. Show VG 9-8 and walk the class through excerpts from FAR 52.233-1—the disputes clause.	

VG 9-8 FAR 52.233-1 DISPUTES

(a) - (b) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act). Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) “*Claim*,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

* * * * *

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that—

- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Contractor’s knowledge and belief; and
- (iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

* * * * *

(f) The Contracting Officer’s decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

* * * * *



(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

f. Describe the CO's role in responding to a claim.


CO's typically:

- Research the claim and prepare a finding of facts.
- Prepare an initial position on the claim and on the amount of any equitable adjustment in price or other terms.
- Discuss the claim with the contractor and try to reach a mutual agreement on its resolution.
- Issue the CO's decision.

9.3 CLAIMS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>g. Question: “If the contractor disagrees with the CO, where does the contractor take its appeal?” [Solicit answers from the class before providing your own]</p> <p>Answer: To the cognizant Board of Contract Appeals or to the United States Claims Court.</p>	
	<p>h. Recap of the Question for Section 9.3: “How should you respond to the contractor's claim for damages resulting from the collapse of the attic floor?”</p> <p>Answer: To the extent that the Government is at fault, the CO probably will accept the claim and attempt to reach an equitable adjustment with the contractor.</p> <p>To the extent that the contractor is at fault, the Government may file a counter claim.</p>	

9.4 SPECIALIZED AREAS

Ref.	Steps In Presenting The Topic	Instructor Notes
 9-11 to 9-14	<p>a. Show VG 9-9: Specialized Areas. State that these areas are the subject of unique laws, rules or contract clauses that are beyond the scope of this course.</p> <p>b. Draw attention to Exhibit 9-9 on page 9-12 of the text/reference.</p>	

Contract Modification	Termination	Claims	Specialized Areas
			ADP/Telecommunications Construction A&E Systems Procurement Simplified Purchasing Real Property Leasing

VG 9-9

RECAP OF LESSON 9

a. Show VG 9-10 and leave it in view during the recap.

Contract Modification	Termination	Claims	Specialized Areas
Modifications/Options Contract Modifications Exercising Options	Termination Termination A. Determine whether to terminate for convenience or default. B. Terminating for convenience. C. Terminating for default. Bonds	Claims Claims	ADP/Telecommunications Construction A&E Systems Procurement Simplified Purchasing Real Property Leasing

VG 9-10

b. Recap the Business Questions that were addressed in Lesson 9.

LESSON 9 BASIC BUSINESS QUESTIONS

9.1 Contract Modification—Should you modify the contract, and, if so, how?

9.2 Termination—Should you terminate the contract, and, if so, how?

9.3 Claims—How should you respond to the contractor's claim?

9.4 Specialized Areas—What are the specialized areas of acquisition?

LESSON 10

STANDARDS OF CONDUCT

Standards of Conduct

TOPIC: STANDARDS OF CONDUCT

Ref: Chapter 10


Objective: When you finish this introduction, your students must be able to:

- Identify standards of conduct that apply to the acquisition process.
- Recognize prohibited activities
- Identify the penalties for prohibited conduct.



Time: 3:00 PM — 30 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
10-1 to 10-4	10.1 Standards of Conduct a. State the public expects Government operations of all kinds to be open, honest, and fair-dealing. This is especially true in acquisition. <div> b. Question: “Who is the publics for the acquisition process and what are their respective concerns about integrity?” [Solicit answers from the class before providing your own] Answer: <ol style="list-style-type: none">1. The Public at Large: That their tax dollars are well spent (bearing in mind that the Government expends more than \$100 billion on its contracts every year).2. Private sector businesses: That they are being treated fairly and impartially when they compete for Federal acquisition dollars.</div>	

STANDARDS OF CONDUCT

Ref.	Steps In Presenting The Topic	Instructor Notes
EO 11222	<p>c. Present the basic standard of conduct:</p> <p>Conduct Government business—except as authorized by the statutes or regulations—with complete impartiality and preferential treatment to none.</p> <p>Among other things, this means that you should:</p> <ul style="list-style-type: none"> • Avoid any conflict of interest. • Avoid the appearance of any conflict of interest. • Conduct yourself such that you would have no reluctance to a full public disclosure of your actions. <p>Note that the exception refers to tradeoffs with socio-economic goals (e.g., preference for small business; preference for American made products).</p>	
	<p>d. Question: “What actions could a Government official or employee take that would be considered unethical?” [Solicit answers from the class before providing your own]</p> <p>Among the answers:</p> <ul style="list-style-type: none"> • Use public office for private gain. • Give preferential treatment to any person. • Impede Government efficiency or economy. • Lose complete independence or impartiality. • Make a Government decision outside official channels. • Adversely affect public confidence in the integrity of the Government. • Disclose proprietary or source selection information to unauthorized sources. 	
	<p>e. Show VG 10-1: Standards of Conduct.</p>	



STANDARDS OF CONDUCT

Apply to all Government personnel including:

- Contracting Personnel
- Technical and Engineering Personnel
- Financial Personnel
- Clerical, Support, and Administrative Personnel

VG 10-1

STANDARDS OF CONDUCT

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Question: “Can you name any others to whom the standards might apply?” [Solicit answers from the class before providing your own]</p> <p>Among the possible answers:</p> <ul style="list-style-type: none"> • Program/project managers • CORs • Anyone else who determines requirements, evaluates proposals, or prepares specifications 	
	<p>g. Show VG 10-2 and 10-2a: Prohibited Conduct (Government). Inform the class that the overheads list types of conduct that are directly prohibited by the FAR and various provisions of title 18 of the United States Code.</p> <p>Continue showing these overheads as you discuss each bullet in turn.</p>	

PROHIBITED CONDUCT (GOVERNMENT)

- Taking bribes
- Representing Contractors
- Making or recommending official decisions in which you have a financial interest
- Conspiring to defraud the Government
- Making false statements and covering up unethical conduct
- Disclosing source selection or proprietary information
- Contracting with Government employees
- Contracting with Members of Congress

VG 10-2 and 10-2a

STANDARDS OF CONDUCT

Ref.	Steps In Presenting The Topic	Instructor Notes
10-5 18 USC 201	<p data-bbox="248 342 454 378">10.2.1 Bribes</p> <p data-bbox="248 415 824 451">a. Define “bribe” and state the penalty.</p> <p data-bbox="297 472 950 562">A gratuity, a gift, a favor, entertainment, a loan, or anything of monetary value, that is solicited and/or accepted from someone who:</p> <ul data-bbox="308 573 987 808" style="list-style-type: none"> • Has or is seeking Government business with your agency • Conducts activities that are regulated by your agency (e.g., FCC, FAA, EPA) • Has interests that may be substantially affected by your performance or nonperformance of your official duties. <p data-bbox="297 829 987 982">Penalty: A fine of not more than 3 times the value of the bribe, or imprisonment of not more than 5 years, or both; a person may also be disqualified from holding office or a position of trust or profit with the United States.</p> <div data-bbox="142 1024 224 1108" style="border: 1px solid black; padding: 2px; display: inline-block; width: 30px; height: 30px; text-align: center; line-height: 30px;">?</div> <p data-bbox="248 1029 987 1302">b. Question: “What if you have lunch with the contractor. The contractor wants to pay by credit card. Should you let the contractor charge the full amount of the bill in return for reimbursement from you in cash for your share of the bill?” [Solicit answers from the class before providing your own]</p> <p data-bbox="297 1323 966 1444">Answer: Not illegal—but note that the only written evidence of the transaction, which may be picked up later in an audit, is the contractor's credit card receipt!!!!</p>	

STANDARDS OF CONDUCT

Ref.	Steps In Presenting The Topic	Instructor Notes
10-5 to 10-6 18 USC 205	<p data-bbox="391 342 915 384">10.2.2 Representing Contractors</p> <p data-bbox="391 415 943 457">a. State that there are restrictions on:</p> <ul data-bbox="415 464 1105 600" style="list-style-type: none"> <li data-bbox="415 464 1105 527">• Representing a contractor while employed by the Government. <li data-bbox="415 533 1105 600">• Representing a contractor after leaving the Government to take a position with that contractor. <p data-bbox="391 642 1084 716">b. Describe restrictions on representing a contractor while employed:</p> <p data-bbox="440 737 1114 894">As a Government employee, you may not act on behalf of a party in any matter, including a claim or contract, in which the U.S. has an interest. This prohibition extends to matters before any agency or tribunal.</p> <p data-bbox="391 936 1084 1010">c. Describe restrictions on representing a contractor after leaving the Government:</p> <p data-bbox="440 1031 1122 1094">You cannot take a position with a contractor and then represent that contractor:</p> <ul data-bbox="448 1100 1130 1272" style="list-style-type: none"> <li data-bbox="448 1100 1130 1163">• On any matter in which you had personally and substantially participated as a Government official <li data-bbox="448 1169 1130 1272">• On matters that were under your official responsibility during your last year of Federal service (within two years after leaving the Government) <p data-bbox="391 1314 1122 1419">d. Describe the penalty: A fine of not more than \$10,000, imprisonment of not more than 2 years, or both.</p>	

STANDARDS OF CONDUCT


Ref.	Steps In Presenting The Topic	Instructor Notes
10-6 18 USC 208	<p>10.2.3 Official Decisions in Which You Have a Financial Interest</p> <p>a. Describe the prohibition on making official decisions in which you have a financial interest.</p> <p>You may not participate personally and substantially in a particular matter in which any of the following have a financial interest:</p> <ul style="list-style-type: none"> • You • Your spouse • Your minor child • Your partner • An organization in which you are serving as officer, director, trustee, partner, or employee • A person or organization with whom you are negotiating for prospective employment <p>b. State that this prohibition may be waived by the appointing official if the financial interest is found to be not so substantial as to affect the integrity of your services.</p> <p>c. Describe the penalty: A fine of not more than \$10,000, or imprisonment of not more than 2 years, or both.</p>	
10-6 to 10-7 18 USC 286	<p>10.2.4 Conspiring to Defraud the Government</p> <p>a. Describe the prohibition on conspiracy.</p> <p>You may not enter into any agreement or conspiracy to defraud the U.S., or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim.</p> <p>b. Describe the penalty: A fine of not more than \$10,000, or imprisonment of not more than 10 years, or both.</p>	

STANDARDS OF CONDUCT		
Ref.	Steps In Presenting The Topic	Instructor Notes
10-7	10.2.5 False Statements and Cover-Ups	
18 USC 1001	<p>a. Describe the prohibition on false statements and coverups.</p> <p>You may not falsify, conceal or cover-up by any trick, scheme, or device, material fact, statements or representations or make or use any false writing or document knowing that it contains a false, fictitious or fraudulent statement or entry.</p> <p>b. Describe the penalty: A fine of not more than \$10,000, or imprisonment of not more than 5 years, or both.</p>	
10-7 to 10-9	<p>10.2.6 Disclosing Source Selection or Proprietary Information</p> <p>a. Describe the FAR restrictions on disclosing source selection or proprietary information.</p> <p>The FAR forbids unauthorized disclosures of:</p> <ul style="list-style-type: none"> • A contractor's proprietary information • Government source selection information <p>[For definitions of “proprietary information” and “source selection information”, refer the class to FAR 3.104-4.]</p> <p>b. Describe the relationship between (1) FAR restrictions on disclosure and (2) phases of the acquisition process.</p> <p>For each phase of the acquisition process, the FAR prescribes (1) who may release information, (2) when it may be released, and (3) how it may be released.</p> <p>For example, you may not disclose the price of a bid prior to bid opening.</p> <p>However, at the bid opening, all prices are publicly announced.</p> <p>Refer the students to pages 10-8 through 10-10 for a phase by phase account of FAR restrictions on disclosure.</p>	

STANDARDS OF CONDUCT

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>c. State the general rule implicit in the FAR for disclosure:</p> <p style="padding-left: 40px;">Do not release information to any one offeror that would give that offeror an unfair competitive advantage over others.</p> <p>d. State that, in addition to FAR restrictions, §1905 of title 18, USC, prohibits disclosure of trade secrets and other proprietary data on an individual or firm.</p> <p>e. Describe the penalty: A fine of not more than \$1,000, imprisonment of not more than 1 year, or both, and removal from office or employment.</p>	
10-9	<p>10.2.7 Contracting With Government Employees</p>	
FAR 3.6	<p>a. Describe the prohibition on contracting with Government employees.</p> <p style="padding-left: 40px;">You may not knowingly award a contract to (1) a Government employee, or (2) a business concern or other organization that is owned or substantially owned or controlled by one or more Government employees.</p> <p style="padding-left: 40px;">An HCA may authorize an exception to this standard only if there is a compelling reason to do so.</p>	
10-9	<p>10.2.8 Contracting With Members of Congress</p>	
FAR 3.102	<p>a. Describe the prohibition on contracting with Government employees.</p> <p style="padding-left: 40px;">You may not award a contract when any member of Congress (or any delegate to Congress or resident commissioner) would have any share or part of the contract or realize any benefit from it.</p> <p>b. Point out Exhibit 10-4, a typical agency penalty guide (page 10-10).</p>	

STANDARDS OF CONDUCT

Ref.	Steps In Presenting The Topic	Instructor Notes
10-11	10.3 Standards of Conduct (Contractors)  <p>a. Show VG 10-3: Prohibited Conduct (Contractors). This viewgraph lists conduct that contractors may not engage in.</p> <p>Continue showing these overheads as you discuss each bullet in turn.</p>	

PROHIBITED CONDUCT (CONTRACTORS)

- Offers of Employment
- Collusive Pricing
- Contractor Gratuities to Government Personnel
- Anti-trust Violations
- Contingent Fees
- Subcontractor Kickbacks
- Unreasonable Restrictions on Subcontractor Sales

VG 10-3

	<p>b. Describe the steps that COs may take upon finding that a firm has violated one or more of these standards.</p> <ul style="list-style-type: none"> • Determine that the firm is nonresponsible for the instant procurement under the General Standard on integrity or eligibility • Recommend the firm for debarment or suspension to the debarring official • Void or rescind contracts in relation to which there has been: <ul style="list-style-type: none"> - A final conviction of bribery - A conflict of interest - Misconduct <p>Note that these actions by the CO are in addition to any criminal penalties imposed by statute.</p>	
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STANDARDS OF CONDUCT		
Ref.	Steps In Presenting The Topic	Instructor Notes
10-11	<p>10.3.1 Offers of Employment</p> <p>a. Describe the prohibition on offering employment to COs.</p> <p>As a general rule, contractors may not offer employment to a Government employee, if the purpose of such an offer is to gain an unfair advantage or otherwise improperly benefit from the offer.</p>	
10-11	<p>10.3.2 Collusive Pricing</p> <p>a. Describe the prohibition on collusive pricing.</p> <p>Offerors must submit prices that are arrived at independently.</p> <p>Define "independently" as meaning "without consultation, communication, or agreement with any other offeror or competitor relating to: (1) prices, (2) intention to submit an offer, or (3) methods or factors used to calculate the prices offered.</p>	
10-12	<p>10.3.3 Contractor Gratuities to Government Personnel</p> <p>a. Describe the prohibition on offering gratuities.</p> <p>Neither the contractor, its agent, nor its representative may offer or give a gratuity to an officer, official, or employee of the Government for the purpose of obtaining a contract or favorable treatment under an existing contract.</p>	

STANDARDS OF CONDUCT		
Ref.	Steps In Presenting The Topic	Instructor Notes
10-12	<p>10.3.4 Anti-Trust Violations</p> <p>a. Describe the prohibition on activities that eliminate competition or restrain trade.</p> <p>Contractors may not participate in activities that eliminate competition or restrain trade, such as:</p> <ul style="list-style-type: none"> • Collusive bidding • Rotated low bids • Collusive price estimating systems • Follow-the-leader pricing • Sharing of the business 	
10-12	<p>10.3.5 Contingent Fees</p> <p>a. Describe the prohibition on contingent fees.</p> <p>Other than to a bona fide employee or agency, offerors may not pay a contingent fee to a person that is contingent upon the success that person has in securing a Government contract for the offeror.</p> <p>This means no payment of a:</p> <ul style="list-style-type: none"> • Commission • Brokerage • Percentage 	
10-13	<p>10.3.6 Subcontractor Kickbacks</p> <p>a. Describe the prohibition on kickbacks.</p> <p>Contractors may not propose, and subcontractors may not pay, kickbacks for award of the subcontract.</p> <p>Examples:</p> <ul style="list-style-type: none"> • Money • Fee • Commission • Gift • Gratuity • Thing of value • Other compensation 	

STANDARDS OF CONDUCT		
Ref.	Steps In Presenting The Topic	Instructor Notes
10-13	<p>10.3.7 Unreasonable Restrictions on Subcontractor Sales</p> <p>a. Describe the prohibition on restricting subcontractor sales.</p> <p>Prime contractors may not unreasonably preclude subcontractors from making direct sales to the Government on the kinds of supplies or services furnished to the prime contractor for use under its contracts with the Government.</p>	
10-14	<p>10.4 Procurement Integrity</p> <p>a. State that, in 41 U.S.C. 423, the Congress established additional prohibitions--and additional administrative, contractual, civil, and criminal penalties--with respect to:</p> <ul style="list-style-type: none"> • Discussions of future employment or business opportunities between Federal procurement officials and competing contractors. • Bribes and gratuities. • The unauthorized disclosure of source selection and proprietary information. <p>b. State that this section of law establishes additional postemployment restrictions on Government officers and employees who served as procurement officials prior to separation from the Government.</p> <p>c. Refer the class to section 3.104 of the FAR for the effective dates and implementation of statutory requirements for procurement integrity.</p>	